

IN THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT
BUREAU COUNTY, ILLINOIS
CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. JAMES E. RYAN,)
Attorney General of the State)
of Illinois,)
Plaintiff,)

v.)

No. 95 CH 18

HORSEHEAD INDUSTRIES, INC.,)
a Delaware corporation,)
MOBIL OIL CORPORATION,)
a New York corporation, and)
VIACOM INTERNATIONAL INC.,)
a Delaware corporation, as)
successor by merger to)
Paramount Communications, Inc.)
Defendants.)

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HOWARD D. SCHUCH
CLERK OF CIRCUIT COURT
BUREAU COUNTY, ILLINOIS

INTERIM CONSENT ORDER

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)	No.
HORSEHEAD INDUSTRIES, INC.,)	
a Delaware corporation,)	
MOBIL OIL CORPORATION,)	
a New York corporation, and)	
VIACOM INTERNATIONAL INC.,)	
a Delaware corporation,)	
as successor by merger to)	
Paramount Communications Inc.,)	
Defendants.)	

INTERIM CONSENT ORDER

Plaintiff, People of the State of Illinois ("State"), ex rel. JAMES E. RYAN, Attorney General of the State of Illinois ("Attorney General"), on his own motion and at the request of the Illinois Environmental Protection Agency ("IEPA"), has filed a complaint in this proceeding pursuant to Sections 22.2 and 42(d) and (e) of the Illinois Environmental Protection Act, 415 ILCS 5/22.2 and 42(d) and (e) (1994), with respect to the operation and/or ownership of the Site located in DePue, Bureau County, Illinois, on which Hazardous Substances have come to be located and released from and also with respect to areas which have been or may be impacted by the release.

The Attorney General, IEPA, and Defendants have agreed to the making and entry of this Interim Consent Order. Except as provided in Section XXXII, entitled "Reservation of Rights," this Interim Consent Order is in partial settlement of all issues covered hereunder between the Plaintiff and Defendants.

NOW THEREFORE, in consideration of the foregoing, and upon the consent of the Defendants hereto to perform the Work and other activities to be ordered by the court, the parties having appeared, due notice having been given or waived, and the court having reviewed this Interim Consent Order, and being fully advised,

IT IS HEREBY ORDERED, DECREED, AND ADJUDGED as follows:

I. JURISDICTION AND VENUE

This court has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1-57.17 (1994). Defendants shall not challenge this court's jurisdiction to enter and enforce this Interim Consent Order. Venue lies in this Circuit and County. Additionally, the venue of any action commenced in Circuit Court for the purposes of interpretation, implementation and enforcement of the terms and conditions of this Interim Consent Order as provided herein shall be in Bureau County, Illinois.

II. PARTIES

A. PLAINTIFF

1. The Plaintiff in this action is the People of the State of Illinois, as represented by the Attorney General.

2. The Attorney General brings this action on his own motion and at the request of IEPA, pursuant to the statutory authority

vested in him under Sections 22.2 and 42 (d) and (e) of the Act, 415 ILCS 5/22.2 and 42(d) and (e) (1994).

3. The IEPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (1994), and charged, inter alia, with the duty to investigate violations of that Act, and to undertake response actions where necessary and appropriate to protect human health and the environment from the release or threat of release of Hazardous Substances. The IEPA is designated by Section 4(1) of the Act, 415 ILCS 5/4(1) (1994), as the implementing agency for the State for all purposes of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, and is authorized to take all action necessary or appropriate to secure to the State of Illinois the benefits of CERCLA. The IEPA is acting pursuant to its own authority under the Act, and regulations promulgated thereunder.

B. DEFENDANTS

"Defendants" are:

- 1) HORSEHEAD INDUSTRIES, INC., a Delaware corporation qualified to do business in Illinois, with an unincorporated division known as ZINC CORPORATION OF AMERICA,
- 2) MOBIL OIL CORPORATION, a New York corporation qualified to do business in Illinois, and
- 3) VIACOM INTERNATIONAL INC., a Delaware corporation, as successor by merger to Paramount Communications Inc., qualified to do business in Illinois.

III. SETTLEMENT, PURPOSES AND GENERAL
OBLIGATIONS OF DEFENDANTS

A. SETTLEMENT

1. The parties stipulate that this Interim Consent Order is entered into for the purposes of settlement only and shall not be construed as an admission of any fact stated herein, fault, or liability. Neither the fact that a party has entered into this Interim Consent Order, nor any of the facts or conclusions of law stipulated herein, shall be used for any purpose in this or any other proceeding except to enforce the terms hereof by the parties to this Interim Consent Order.

2. The undersigned representative for each party certifies that he or she is fully authorized by that party to enter into this Interim Consent Order and legally bind that party to the terms and conditions of this Interim Consent Order.

3. The Defendants agree to satisfactorily complete all Work and other obligations required by the terms and conditions hereunder, and consent to and will not contest or legally challenge the issuance or validity of this Interim Consent Order or the State's authority to enter into this Interim Consent Order pursuant to the Act and regulations promulgated thereunder.

B. PURPOSES AND GENERAL OBLIGATIONS OF DEFENDANTS

1. Purposes. The purposes of this Interim Consent Order are to determine the nature and extent of the release, threatened release or presence of Hazardous Substances at or from the Site, to identify and evaluate alternatives for remedial action that will be protective of human health and the environment, and that will be

consistent in all respects with the Illinois Hazardous Substances Pollution Contingency Plan ("ICP"), 35 Ill. Adm. Code Part 750, as amended, and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"), as amended, and to provide reimbursement for all response costs not inconsistent with the ICP and the NCP which have been or may be incurred by the State as the result of releases, threatened releases or the presence of Hazardous Substances at or from the Site.

The above-specified purposes shall be accomplished by performing Interim Measures, conducting a Remedial Investigation and Feasibility Study ("RI/FS"), performing a Remedial Investigation and Design Study ("RI/DS") for any Presumptive Remedy(s) ("PR") proposed by the Defendants and approved by the State, the preparation of a remedial design for any such PR(s), and/or the performance of other response actions, which shall be governed by the terms of this Interim Consent Order. The State, in consultation with USEPA, shall have the sole discretion in determining whether a PR(s) proposed by the Defendants for a specific unit is appropriate at the Site. The exercise of this discretion is not subject to Section XXVIII "Dispute Resolution". Pursuant to Item 13, Attachment 1 ("Statement of Work ("SOW") for Interim Measures and Other Response Actions at the DePue Site"), a Scoping Document for Presumptive Remedies will be presented at a public hearing prior to the selection of any PR(s).

The parties contemplate that this Interim Consent Order shall govern the completion of the RI/FS or RI/DS for any PR(s), the conduct of a public hearing to describe the remedial alternatives

considered and the recommended Remedial Action ("RA"), and the submission by Defendants of any and all plans and specifications necessary to implement the RA for any selected PRs. The parties also contemplate that implementation of the selected Remedial Action by the Defendants shall proceed pursuant to a subsequent Remedial Design/Remedial Action ("RD/RA") Final Consent Order to be negotiated in good faith between the parties. Notwithstanding the previous sentence, the Defendants shall perform those response actions relative to the discharge of groundwater containing metals above regulatory limits to surface waters and relative to the ditch which receives this surface water flow, all as required more specifically at Items 4 and 5 in Attachment 1 of the Interim Consent Order.

2. General Obligations of Defendants. The achievement of the above-specified purposes shall be the sole responsibility of the Defendants who shall satisfactorily complete all of the following general obligations, each of which is more particularly described elsewhere in this Interim Consent Order and in attachments hereto:

a. to complete Interim Measures as described in Attachment 1 hereto;

b. to make a full determination of the nature and extent of the threat or potential threat to the public health, welfare and the environment resulting from the release, threatened release or presence of Hazardous Substances at or from the Site by the completion of an RI as set forth in Attachments 1 and 2, the SOW. This RI shall include the collection of data sufficient to adequately characterize the

Contamination at the Site and in any area or media impacted by releases, threatened releases or the presence of Hazardous Substances at or from the Site. Data collected by Defendants pursuant to this Interim Consent Order or otherwise obtained by Defendants shall be used to develop and evaluate potential remedial alternatives, including potential PR(s), as more specifically provided in Attachments 1 and 2 hereto, the SOW;

c. to identify and make a full evaluation of appropriate alternatives to remedy the release, threatened release or presence of Hazardous Substances at or from the Site by the completion of an RI/FS, and/or by the completion of an RI/DS for any PR(s). This FS shall address the Site and any areas or media impacted by releases, threatened releases or the presence of Hazardous Substances at or from the Site. The Defendants shall provide to the State complete information derived from the RI and FS or otherwise obtained by them relative to the Contamination at or from the Site, so that the IEPA, in consultation with the Attorney General, may select the most appropriate remedial action;

d. to take immediate actions to address the water containing metals above regulatory limits which discharges to the ditch which empties into DePue Lake. All current discharges to the ditch containing metals above regulatory limits will be collected and treated pursuant to Section XXVII herein.

e. to conduct a focused RI/FS and implement the approved RD and RA to address the ditch which receives surface water flow from the former plant site which empties into DePue Lake pursuant to Item 5 in Attachment 1 of the Interim Consent Order.

f. to fully reimburse IEPA and the Attorney General for all Response Costs not inconsistent with the ICP and the NCP which have been or may be incurred by them as the result of releases, threatened releases or the presence of Hazardous Substances at or from the Site;

g. to conduct all Work described in a, b, c, d and e above, as more specifically provided in the SOW, employing sound scientific, and engineering practices, and in a manner which is consistent with the ICP and the NCP, as amended;

h. to cooperate with the State in the conduct of the community participation activities necessary to inform the residents living in the area of the Site of the results of the RI, and to allow them to comment on remedial alternatives considered in the FS, or PR(s) as applicable;

i. to satisfactorily perform each and every obligation of Defendants under this Interim Consent Order; and

j. to specifically acknowledge and assume the responsibility to achieve consistency with the ICP and the NCP in performing all Work and other obligations required under this Interim Consent Order.

3. Previous Work. Defendants collected data and performed studies, analyses and other work prior to entering into this Interim

Consent Order which, upon approval by the State, may be used to satisfy certain requirements of this Interim Consent Order, to the extent consistent with the ICP and the NCP. Such previous work may be included with the Site Assessment Plan and may be submitted to the State in accordance with Section XIII(B)(1) herein.

IV. PARTIES BOUND AND NOTIFICATION RESPONSIBILITIES

A. PARTIES BOUND

This Interim Consent Order applies to and binds the following parties, all of which are "persons" as defined in Section 3.26 of the Act, 415 ILCS 5/3.26 (1994), and in Section 101(21) of CERCLA, 42 U.S.C. 9601(21):

1. The People of the State of Illinois, including the Attorney General and IEPA; and
2. The Defendants, as well as their successors and assigns.

B. DEFENDANTS' RESPONSIBILITY

1. Ensuring Compliance. The Defendants shall have the sole responsibility to ensure the satisfactory completion of the Work and other obligations required of them under this Interim Consent Order. The Defendants shall be solely responsible to insure that their officers, directors, agents, employees, servants, contractors, consultants, principals, successors and assigns, and all other persons, entities, firms, parents, subsidiaries or divisions acting on their behalf fully comply with each and every term and condition of this Interim Consent Order. Defendants shall not raise the defense of the failure of any of their officers, directors, agents, employees, servants, contractors, consultants, principals,

successors, assigns, firms, parents, subsidiaries or divisions to take such action as shall be required to comply with the provisions of this Interim Consent Order in any action brought to enforce this Interim Consent Order.

2. Change of Ownership. No change in ownership, corporate, or partnership status shall in any way alter the status or responsibility of the Defendants under this Interim Consent Order. In the event that any Defendant ceases to exist by purchase, merger or other acquisition, that successor corporation or entity shall also be jointly and severally responsible for the satisfactory completion of the Work hereunder along with the Defendants.

C. NOTIFICATION RESPONSIBILITIES.

Defendants shall provide a copy of this Interim Consent Order to any contractor hired to perform any part of the Work required by this Interim Consent Order, and shall require each contractor to provide a copy of this Interim Consent Order to any subcontractor retained to perform any part of the Work.

V. NOTICE OF ACTION

A. NOTICE TO DEFENDANTS

The IEPA has notified the Defendants of their potential liability for Contamination at or from the Site, and has offered them the opportunity to conduct the Work described hereunder pursuant to a 4(q) notice sent to the Defendants on April 14, 1994.

B. NOTICE TO PRESIDENT AND TRUSTEES.

IEPA has notified the President of the United States, the Federal Natural Resources Trustee, and the State Trustees of Natural Resources of this action by providing each of them with a copy of the notice letter sent to the Defendants. The State Natural Resource Trustees are the Directors/Managers of the: (1) Department of Natural Resources; and (2) IEPA.

VI. CONSISTENCY WITH FEDERAL AND STATE LAW, THE NCP, AND THE ICP

The Work and other required activities conducted pursuant to this Interim Consent Order shall be subject to approval by the State as provided herein, shall employ sound scientific and engineering practices, and shall be consistent with CERCLA, as amended, the NCP, as amended, and the ICP, as amended. The Work shall be completed in accordance with the standards, specifications and schedules for completion set forth in this Interim Consent Order and the attached SOW. Whenever IEPA approval is required by this Interim Consent Order, it shall not be unreasonably withheld.

VII. DEFINITIONS

Whenever the following terms are used in this Interim Consent Order and the attachments hereto, the following definitions shall apply:

1. "Act" means the Illinois Environmental Protection Act, 415 ILCS 5/1-57.17 (1994).
2. "BRAP" means Baseline Risk Assessment Plan.
3. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended.
4. "Interim Consent Order" means this Interim Consent Order and all attachments hereto. In the event of conflict between this Interim Consent Order and any attachment, the Interim Consent Order shall control.
5. "Contamination" or "Contaminated" means the presence of a Hazardous substance(s) at levels above background. Background levels shall be determined by sampling activities performed during the RI.
6. "Contractor" means the company or companies retained by or on behalf of Defendants to undertake and complete the Work required by this Interim Consent Order. Each contractor or subcontractor shall be qualified to do those portions of the Work for which it is retained. Each contractor and subcontractor shall be deemed in privity of contract with Defendants within the meaning of Section 107(b) of CERCLA, 42 U.S.C. 9607(b).
7. "Days" means calendar days unless otherwise specified.
8. "Defendants' Project Coordinators" refer to the persons

designated by the Defendants and approved by the State. These individuals shall coordinate, monitor and direct, the Work at and related to the Site, under the supervision of the State Project Manager.

9. "Design Study" ("DS") means a study conducted in place of a Feasibility Study ("FS") to conceptually design and propose a Presumptive Remedy ("PR") as the selected response action for the Site, or areas of the Site. The sequence of events leading to the conduct and approval of a DS is more specifically described in the SOW in Attachment 2.

10. "Documents" shall specifically include, but shall not be limited to, correspondence, narrative reports, computer discs, video recordings, records, files, photographs, sampling and monitoring data and analyses, chain of custody records, manifests, contracts, trucking logs, bills of lading, receipts, records pertaining to traffic routing, destination of waste materials, and volume and chemical nature of such materials, and documentary evidence of any and all investigatory or response actions undertaken by any person at the Site or on any area or media impacted by releases, threatened releases or the presence of Hazardous Substances at or from the Site. The term "document" shall be construed broadly, but shall not be construed to include documents protected by the attorney-client privilege, attorney work product or other privileges as defined in Section XXII(E) (3) herein.

11. "Facility" shall mean facility as that term is defined in Sections 22.2(h) (1) (A) and (B) of the Act, 415 ILCS 5/22.2(h) (1) (A) and (B) (1994), and in Sections 101 (9) (A) and (B) of CERCLA, 42

U.S.C. 9601 (9)(A) and (B). The facility consists of those areas which are impacted by Hazardous Substances at or from the Site.

12. "Hazardous Substance" shall have the meaning provided in Section 3.14 of the Act, 415 ILCS 5/3.14 (1994), and in Section 101(14) of CERCLA, 42 U.S.C. 9601(14).

13. "ICP" means the Illinois Hazardous Substance Pollution Contingency Plan which is found at 35 Ill. Adm. Code Part 750, as amended.

14. "IEPA" or "Agency" means the Illinois Environmental Protection Agency, an administrative agency of the State of Illinois, its employees, and its authorized representatives.

15. "Interim Measures" means securing the Site with fencing adequate to restrict passive entry, instituting a Site perimeter air monitoring program, closing the vanadium pentoxide catalyst area, and initiating dust suppression measures at such areas of the Site as may be determined by the State.

16. "National Contingency Plan" or "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated by USEPA pursuant to Section 105 of CERCLA, 42 U.S.C. 9605, which appears at 40 C.F.R. Part 300, as amended.

17. "Parties" means the State of Illinois and the Defendants.

18. "Plaintiff" or "State" means the People of the State of Illinois, acting through the Attorney General and IEPA, as represented before this court by the Attorney General.

19. "Presumptive Remedy" or "PR" means a remedy that is proposed by the Defendants and that the State, in consultation with

USEPA, may determine as being an acceptable remedy for the Site or areas of the Site.

20. "QAPP" means the Quality Assurance Project Plan for the Work. It shall be consistent with current USEPA guidance.

21. "ROD" means Record of Decision.

22. "Release" means release as that term is defined in Section 3.33 of the Act, 415 ILCS 5/3.33 (1994), and in Section 101(22) of CERCLA, 42 U.S.C. 9601(22).

23. "RD" and "RA" mean the plan for the conduct of a Remedial Design ("RD") and Remedial Action ("RA") to address the Contamination at or from the Site.

24. "Response Costs" shall mean all costs not inconsistent with the NCP which have been or may be incurred by the State as the result of releases, threatened releases or presence of Hazardous Substances at or from the Site including, but not limited to, payroll and other direct costs; indirect and overhead costs; administrative costs such as photocopying, postage, telephone calls and community relations; conveyances; sampling and laboratory costs; travel costs incurred by the State Project Manager and other State employees, agents or consultants; contractor costs; investigatory work and engineering evaluations conducted pursuant to the State's direction; costs for review of the work performed pursuant to this Interim Consent Order; and litigation costs including, but not limited to, all costs necessary to negotiate this Interim Consent Order, to monitor the Defendants' compliance with this Interim Consent Order, to obtain overdue payments for Response

Costs or penalties or to otherwise enforce this Interim Consent Order.

25. "RI/FS Work Plan" means the plan for the conduct of a Remedial Investigation ("RI") and a Feasibility Study ("FS") or an alternate work plan or modified plan relative to the Contamination at or from the Site.

26. "Satisfactory or Satisfactorily," as these terms apply to the performance or completion of the Work and other required activities conducted and to be conducted pursuant to this Interim Consent Order, mean sufficient to obtain the approval of the State.

27. "Site" shall mean the area or areas generally consisting of the real estate owned or formerly owned by Defendants located in and around DePue, Bureau County, Illinois. A map of the Site is attached hereto as Attachment 3.

28. "Statement of Work" ("SOW") refers to both Attachment 1 ("Statement of Work for Interim Measures and Other Response Actions at the De Pue Site") and Attachment 2 ("Statement of Work for Conducting a Remedial Investigation/Feasibility Study and/or Remedial Investigation/Design Study at the De Pue Site") hereto, except when the reference is limited to only Attachment 1 or 2, as specified.

29. "State Project Manager" refers to the IEPA employee designated by the State to coordinate, monitor and direct the Work at and related to the Site, in consultation with the Attorney General.

30. "USEPA" means the United States Environmental Protection Agency, its employees, agents and authorized representatives. USEPA

is not a party to this Interim Consent Order or this cause of action.

31. "Work" means the satisfactory completion of the Interim Measures, Removal Actions and Remedial Actions as specified in Attachment 1 hereto, and the satisfactory completion of the RI/FS, the RI/DS for the identified PR(s), and the design of the selected PR(s), as more particularly specified in Attachment 2 hereto, and any other work related thereto as set forth in Section III.

Unless otherwise specified herein, terms used in this Interim Consent Order and attachments shall have the meanings defined in the Act, CERCLA, the ICP, the NCP, and other applicable regulations, as amended.

VIII. STATEMENT OF FACTS

A. SITE OPERATIONS AND HISTORY OF OWNERSHIP

1. The Site is located in and around DePue, Bureau County, Illinois. A map of the Site is attached hereto as Attachment 3.

2. During various time periods between approximately 1903 and 1989, the Site may have been the location of various operations including, but not limited to, the following: a) primary smelting of zinc ore, b) production of lithopone paint pigment, c) production of sulfuric acid, d) production of phosphoric acid, e) manufacture and distribution of diammonium phosphate fertilizer, f) manufacture of zinc dust, g) recovery and refinement of various other lesser concentration metal contained in zinc ore and scrap zinc, and h) operation of a secondary zinc smelter. On information and belief,

other operations less clearly identifiable from available records are likely to also have taken place at the Site.

3. The conduct of those activities described above in paragraph 2 and more specifically described below, and their associated construction, demolition, and disposal activities may have resulted in the placement of Hazardous Substances on some parts of the Site.

4. Sometime between 1903 and 1906, Mineral Point Zinc acquired property within the Site and constructed a primary zinc smelter and a sulfuric acid plant utilizing high sulfur gas from zinc ore roasting.

5. Sometime in 1923, Mineral Point Zinc constructed and began operating a plant for the manufacture of lithopone paint pigment. This pigment was a formulation of zinc and barium compounds.

6. In or about 1938, The New Jersey Zinc Company acquired Mineral Point Zinc and operated the Site as Mineral Point Zinc, a division of The New Jersey Zinc Company.

7. Sometime in 1955, The New Jersey Zinc Company deleted the Mineral Point Zinc name and began operating the Site as The New Jersey Zinc Company.

8. In or about 1955, production of lithopone paint pigment ceased and the lithopone plant was demolished thereafter.

9. Sometime in 1966, Gulf & Western Industries, Inc. ("G&W") purchased The New Jersey Zinc Company.

10. Sometime during 1966 and/or 1967, G&W constructed and began operating a diammonium phosphate ("DAP") manufacturing plant.

The DAP manufacturing process involved the conversion of sulfuric acid to phosphoric acid and the reaction of phosphoric acid with ammonia to produce DAP fertilizer. This process resulted in the generation of gypsum (calcium sulfate) as a by-product.

11. In or about 1971, the primary zinc smelter and DAP plant were closed by The New Jersey Zinc Company.

12. Sometime in 1972, Mobil Oil Corporation ("Mobil") leased and began operating the DAP plant. Mobil subsequently purchased the DAP plant in 1975.

13. Sometime in 1981, Horsehead Industries, Inc. ("Horsehead") purchased certain assets of The New Jersey Zinc Company from G&W and formed The New Jersey Zinc Company, Inc., a division of Horsehead Industries, Inc. Horsehead utilized a portion of the Site for the manufacture of zinc dust from secondary zinc sources.

14. Sometime in 1987, Horsehead changed the name of its operation at the Site to Zinc Corporation of America ("ZCA").

15. Sometime in 1987, Mobil closed the DAP plant. Sometime after 1987, Mobil demolished the DAP plant and acid plants.

16. Sometime in 1989, ZCA ceased zinc dust operations at the Site.

17. On June 2, 1989, G&W changed its name to Paramount Communications Inc.

18. Sometime in 1991, ZCA demolished the zinc plant.

19. On January 3, 1995, Paramount Communications Inc. merged into Viacom International Inc.

B. IDENTIFIED WASTE DISPOSAL UNITS/AREAS OF CONTAMINATION

1. Sometime prior to 1935, a primary zinc slag pile ("cinder bank") was created at the Site and was thereafter used as an area for the disposal of slag/cinder material from the zinc smelting process. Crucibles and other process waste are also apparent in this area.

2. On March 11, 1992, IEPA collected two (2) samples from the cinder bank. On March 11, 1993, the USEPA collected one (1) sample from the cinder bank. Analyses of these three (3) samples revealed the presence of heavy metals.

3. The cinder bank is located on a portion of the Site owned by Horsehead.

4. From time to time between 1923 and 1957, material from the lithopone process was deposited in a series of ridges ("lithopone ridges") along the eastern portion of the Site.

5. On March 11, 1992, the IEPA collected two (2) samples from the lithopone ridges. On March 11, 1993, the USEPA collected one (1) sample from the lithopone ridges. Analyses of these three (3) samples revealed the presence of heavy metals.

6. The lithopone ridges are located on a portion of the Site owned by Horsehead.

7. An undetermined number of drums of spent vanadium pentoxide catalyst material were disposed of near the southeastern corner of the Site. Disposal of these drums was both surface and subsurface. On March 11, 1993, the USEPA collected one (1) sample from this portion of the Site. Analysis of this sample revealed the presence of heavy metals.

8. The vanadium pentoxide disposal area is located on a portion of the Site owned by Mobil.

9. Located in the central portion of the Site is a ditch which is a tributary of DePue Lake. This ditch contains an undetermined amount of unnatural sediments.

On April 29, 1993, the IEPA collected a sample of both the sediment and water in the ditch. Analyses of these samples revealed the presence of heavy metals.

11. This ditch is located on a portion of the Site owned by Horsehead.

12. Located north of the cinder bank and continuing along the cinder bank in a southerly direction runs a drainage pipe. This drainage pipe ultimately leads to the ditch described above.

13. On July 12, 1982, pursuant to a Consent Order entered with this court on November 17, 1981, in People of the State of Illinois v. Gulf and Western Industries, Inc., and The New Jersey Zinc Corporation, Inc., 78 CH 4, The New Jersey Company, Inc. received National Pollutant Discharge Elimination System ("NPDES") Permit No. IL0052183 for the pipe described above in paragraph 12. Prior to expiration of this permit ZCA timely filed a permit renewal application with the Agency, thus keeping the July 12, 1982, permit in effect. In addition, The New Jersey Zinc Company, Inc., and subsequently ZCA, was ordered to install a stormwater collection system and to grade, cap and vegetate a portion of the Site.

14. Pursuant to special condition #3 of NPDES Permit No. IL0052183, The New Jersey Zinc Company, Inc., and subsequently ZCA,

was required to monitor various parameters in its discharge and submit monitoring results to the Agency.

15. On April 7, 1988, by order of the Illinois Pollution Control Board, The New Jersey Zinc Company, Inc. was granted a variance from the discharge limits contained in NPDES Permit No. IL0052183. Said variance required the company to submit a plan for achieving compliance with the limits of the NPDES permit. In accordance with the plan submitted by the New Jersey Zinc Company, ZCA (1) lined an upstream collection trench with iron rich material, a binding agent for metals removal, 2) installed an IRM slurry wall between the Cinder Bank and the receiving stream, and 3) installed an IRM-lined collection sump in the sewer line.

16. Said variance also required compliance with the following interim discharge limits:

<u>Parameter</u>	<u>30-day Av.</u> mg/l	<u>Daily Max</u> mg/l
cadmium	0.5	1.0
copper	2.0	4.0
iron	3.0	6.0
manganese	5.0	10.0
TSS	75	150
zinc	25	50

17. ZCA's 1992 Discharge Monitoring Reports revealed the following discharge results (mg/l):

	<u>Cadium</u>		<u>Iron</u>		<u>Zinc</u>		<u>Copper</u>		<u>Manganese</u>		<u>TSS</u>	
	MA	DM	MA	DM	MA	DM	MA	DM	MA	DM	MA	DM
	0.5	1.0	3.0	6.0	25	50	2.0	4.0	5.0	10.0	75	150
3/92			4.9	12.2	35	78						
4/92	0.9	2.5	23.1	77.3	84	183			149		310	
5/92				5.4	42						41	
6/92	2.4	5.9	30.3	67.2	265	549	4.9	7.3	10.7	11.4	660	1652
7/92					122	153	4.3	5.2	13.1	15.2		
8/92					54	124	2.2	5.4	5.5	12.8		
11/92			82.3	246.3	87	260			14.0	40.6		

"MA" equals monthly average

"DM" equals daily maximum

18. Sometime between 1966 and 1967, a phosphogypsum pile was created at the Site by G&W for the disposal of waste gypsum, a by-product of the DAP manufacturing process.

19. On March 10, 1992, the IEPA collected a surface water sample from the gypsum stack. Analysis of this sample revealed the presence of ammonia. Ammonia is a Hazardous Substance pursuant to Section 311 of the Clean Water Act, 33 U.S.C. 1321.

20. The gypsum stack is located on a portion of the Site owned by Mobil.

21. Surface soils throughout the Site contain concentrations of heavy metals. On March 11 & 12, 1992, the IEPA collected three (3) soil samples in the area of the factory and twenty (20) soil samples from the residential area in and around DePue. On April 29, 1993, the IEPA also collected two (2) surface soil samples from a ditch that runs along Marquette Street in DePue. Analyses of these samples revealed the presence of heavy metals.

22. Cadmium concentrations observed in the residential soil samples exceed health based standards and are subject to ongoing studies by the Illinois Department of Public Health.

23. On April 29, 1993, the IEPA collected two (2) surface water samples from within the factory boundaries. Two (2) samples were collected outside the factory boundaries. Analyses of these samples revealed the presence of heavy metals.

IX. CONCLUSIONS OF LAW

This court hereby makes the following conclusions of law, based on the information available as of the date of entry of this Interim Consent Order:

1. The Site is part of a "facility", as defined in Sections 22.2(h)(1)(A) and (B) of the Act, 415 ILCS 5/22.2(h)(1)(A) and (B) (1994), and in Sections 101(9)(A) and (B) of CERCLA, 42 U.S.C. 9601(9)(A) and (B). A map of the Site is attached hereto as Attachment 3.

2. Between approximately 1903 and 1989, "Hazardous Substances," as defined in Section 3.14 of the Act, 415 ILCS 5/3.14 (1994), and in Section 101(14) of CERCLA, 42 U.S.C. 9601(14) were deposited, stored, disposed of, placed, or otherwise came to be located at the Site and from the Site.

3. Defendants are "persons" as defined in Section 3.26 of the Act, 415 ILCS 5/3.26 (1994), and in Section 101(21) of CERCLA, 42 U.S.C. 9601(21).

4. Defendants are or were "owners" of a significant portion of the Site within the meaning of a responsible party under Section

104, 107 and 122 of CERCLA, 42 U.S.C. 9604, 9607 and 9622 and Section 22.2(h)(2) of the Act, 415 ILCS 5/22.2(h)(2)(1994), and Section 101(20) of CERCLA, 42 U.S.C. 9601(20).

5. Defendants are or were "operators" of the Site, within the meaning of Section 22.2(h)(2) of the Act, 415 ILCS 5/22.2(h)(2)(1994), and Section 101(20) of CERCLA, 42 U.S.C. 9601(20).

6. Defendants are persons who are liable for all Response Costs incurred by the State not inconsistent with the NCP and the ICP, pursuant to Section 22.2 of the Act, 415 ILCS 5/22.2 (1994), and Section 107 of CERCLA, 42 U.S.C. 9607.

7. The State alleges that Defendant Horsehead Industries, Inc. has and continues to violate Sections 12(a) and 12(f) of the Act, 415 ILCS 5/12(a) and (f) (1994), as a result of those actions described above in Section VIII(B), paragraphs 13 through 17.

8. The past, present and potential migration of Hazardous Substances at or from the Site constitutes an actual and/or threatened "release" into the "environment" as those terms are defined, respectively, in Section 3.33 of the Act, 415 ILCS 5/3.33 (1994), and Section 101(22) of CERCLA, 42 U.S.C. 9601(22), and in Section 101(8) of CERCLA, 42 U.S.C. 9601(8).

X. DETERMINATIONS

This court hereby makes the following determinations:

1. Based on the foregoing Statement of Facts and Conclusions of Law, the court finds and the parties agree that the Defendants shall conduct to completion an RI/FS of the Contamination at and from the Site, an RI/DS for identified PR(s), the design of any

PR(s) approved by the State and performance of the response actions relative to the discharge of groundwater containing metals above regulatory limits to surface waters and relative to the ditch which receives this surface water flow, all as required more specifically at Items 4 and 5 in Attachment 1 of the Interim Consent Order. The State, in consultation with USEPA, has the sole discretion to determine whether an RI, DS and PR proposed by the Defendants is an acceptable remedy instead of an RI and FS;

2. Based on the foregoing Statement of Facts and Conclusions of Law, the court finds and the parties agree that the Work and other activities outlined in this Interim Consent Order are necessary to ensure the protection of public health, welfare and the environment;

3. Based on the foregoing Statement of Facts and Conclusions of Law, the court finds and the parties agree that the Work and other activities required by this Interim Consent Order will, if properly performed to completion as set forth herein and in Attachments 1 and 2 and guidance documents referenced therein, be in the public interest and are consistent with the ICP, 35 Ill. Adm. Code Part 750, as amended, the NCP, 40 C.F.R. Part 300, as amended, and with CERCLA, as amended; and

4. Based upon a review of the foregoing Statement of Facts and Conclusions of Law, the court finds and the parties agree that all Response Costs which were incurred by the Agency after March 1, 1993, and prior to January 1, 1995, and which were incurred by the Attorney General after March 1, 1993 and prior to entry of this Interim Consent Order, as the result of releases, threatened

releases or the presence of Hazardous Substances, at or from the Site were and are consistent with the ICP and the NCP.

XI. STATEMENT OF WORK

Defendants shall be responsible to undertake and complete, at their own expense, all Work and all other activities called for by this Interim Consent Order, or the attached SOW, subject to Section XXXIX(A) and (B). The SOW is attached hereto as Attachments 1 and 2, and is an enforceable part of this Interim Consent Order.

XII. BASELINE RISK ASSESSMENT PLAN

So long as USEPA guidance authorizes PRPs to perform a Baseline Risk Assessment Plan ("BRAP"), Defendants shall petition the USEPA for permission to hire their own contractor to perform the BRAP. The State shall lend its full support to Defendants' petition. In the event that the Defendants are permitted to conduct the BRAP, they shall do so in a manner consistent with the SOW and with IEPA and USEPA guidance, including, but not limited to, OSWER Directives 9285.5-1 (April 1988) and 9285.7-01C (December 1991). If the Defendants fail to conduct the BRAP in accordance with applicable guidance, or if the Defendants are refused permission to conduct the BRAP, the IEPA's contractor shall conduct the BRAP, in coordination with the Defendants' performance of the RI/FS. The Defendants shall have no contractual relationship with the IEPA's contractor and shall have no authority to direct or approve the Work of the IEPA's contractor.

XIII. RI/FS OR RI/DS WORK PLANS

A. INTERIM CONSENT ORDER TO GOVERN

This Interim Consent Order and all state and federal laws and guidance referenced herein shall govern all aspects of the RI/FS and/or RI/DS required herein.

B. PLANS TO BE PREPARED

The following plans shall be prepared by the Defendants:

1. Site Assessment Plan. Within thirty (30) days of entry of this Interim Consent Order, Defendants shall submit for review to the State the Site Assessment Plan as set forth in the SOW attached hereto.

2. Work Plan. Within ninety (90) days of the Defendants' receipt of the State's approval of the Site Assessment Plan, the Defendants shall submit a Draft RI/FS Work Plan to the State and USEPA for the conduct of the RI and FS. The Draft RI/FS Work Plan shall provide, at a minimum, for the submittal of preliminary and final RI Reports, and draft, draft final, and final FS Reports.

3. Contents of RI/FS Work Plan. The Draft RI/FS Work Plan submittal shall include, but not be limited to, the following project plans:

(a) a field sampling plan; (b) a health and safety plan; (c) a plan for satisfaction of permitting requirements; (d) a QAPP; (e) a data management plan; and (f) a schedule for implementation of RI/FS tasks and deliverables such as preliminary and final technical memoranda, preliminary and final RI Reports, preliminary and final BRAPs, (if it is determined that the State is not conducting the BRAPs), and draft, draft final, and final FS Reports.

4. Contents of RI/DS Work Plan. If proposed by the Defendants and accepted by the Agency, a Draft RI/DS Work Plan may be submitted to supplement the RI/FS Work Plan described above in Section XIII(B)(3). The Draft RI/DS Work Plan submittal shall include, but not be limited to, the following project plans:

a) a field sampling plan; b) a health and safety plan; c) a plan for satisfaction of permitting requirements; d) a QAPP; e) a data management plan; and f) a schedule for implementation of the RI/DS task and deliverables such as preliminary and final technical memoranda, preliminary and final BRAPs (if it is determined that the State is not conducting the BRAPs), Identification of Conceptual Presumptive Remedy(s), Draft Final and Final Scoping Documents for Presumptive Remedy(s), and draft, draft final and final design for Presumptive Remedy(s).

To the extent practicable, the above project plans may be addendums or supplements to those plans submitted pursuant to Section XIII(B)(3) above.

5. Where appropriate, all documents provided shall be separate, distinct, complete and not included as appendices within any document.

C. **GUIDANCE**

The RI/FS and/or RI/DS Work Plan shall be developed consistent with the SOW attached hereto (Attachment 2), the standards set forth in Section 121 of CERCLA, 42 U.S.C. 9621, USEPA guidance entitled, "Conducting Remedial Investigations/Feasibility Studies (RI/FS) Under CERCLA", dated October, 1988, as amended, Superfund Remedial Design and Remedial Action Guidance (OSWER Directive 9355.0-4, June

1986) as amended and any additional guidance documents specified herein. In the event that any additional guidance is provided to the Defendants by the State after the entry of this Interim Consent Order, but before final approval of the RI/FS and/or RI/DS Work Plan, corresponding amendments, if necessary, shall be made in accordance with Section XXXIX.

D. REVIEW OF RI/FS or RI/DS WORK PLAN

1. Work Plan Review. The Draft RI/FS and/or RI/DS Work Plan shall be subject to review, modification, and approval by the State.

2. Notification of Approval or Disapproval. The State agrees to review the Draft RI/FS or RI/DS Work Plan within ninety (90) days of receipt of such plan. The State may extend the time for review by a period not to exceed thirty (30) days, by notifying Defendants prior to the expiration of the initial ninety (90) day review period. In the event of any disapproval or conditional approval of a plan or report, the State shall specify, in writing, any deficiencies and required modifications to the Draft RI/FS or RI/DS Work Plan. Failure of the State to respond within the time set forth herein shall not be construed as approval of any plan or report.

3. Informal Negotiation. During the thirty (30) day period following Defendants' receipt of the State's disapproval or conditional approval of the Draft RI/FS or RI/DS Work Plan, the parties shall negotiate in good faith with the objective of developing an agreed upon revised Draft RI/FS or RI/DS Work Plan. If the parties fail to reach agreement on the revisions to the Draft RI/FS or RI/DS Work Plan, Defendants may initiate the Dispute

Resolution procedures as provided in Section XXVIII. If Defendants fail to initiate the Dispute Resolution procedures within the ten (10) day time period set forth in Section XXVIII, Defendants shall be deemed to have agreed to the specified modification(s).

4. Submission of Revised RI/FS Work Plan. Within forty-five (45) days of completion of the informal negotiations conducted pursuant to paragraph (D) (3) above, if the Defendants do not invoke Dispute Resolution, the Defendants shall submit a revised RI/FS Work Plan to the State which incorporates all modifications required by the State.

5. Submission of Revised RI/DS Work Plan. Within forty-five (45) days of completion of the informal negotiations conducted pursuant to paragraph (D) (3) above, if the Defendants do not invoke Dispute Resolution, the Defendants shall submit a revised RI/DS Work Plan to the State which incorporates all modifications required by the State or the Work pursuant to the RI/FS Work Plan. The schedules and other requirements set forth in this Section XIII shall apply.

6. State Right to Conduct RI/FS. In the event the parties are unable to agree on the revised RI/FS Plan, the State retains the right to conduct a complete RI/FS and/or to enforce the terms of this Interim Consent Order, subject to the parties' right to invoke Dispute Resolution proceedings.

7. Implementation of Work Plan. Within thirty (30) days of receipt of an approved RI/FS or RI/DS Work Plan, Defendants shall begin implementation of the Work detailed in the RI/FS or RI/DS Work Plan.

8. Incorporation of Work Plan. The fully approved RI/FS and/or RI/DS Work Plan shall be deemed incorporated into and made an enforceable part of this Interim Consent Order. In order to assure that the RI/FS and/or RI/DS is conducted in full compliance with the Act and with CERCLA, as amended, the Work Plan shall conform with all relevant portions of the Act and CERCLA, as amended, including, but not limited to, Section 121 of CERCLA, 42 U.S.C. 9621. All Work shall be conducted in accordance with the Act and with CERCLA, as amended, the NCP, as amended, the ICP, as amended, and all other requirements and guidance specified herein, or in the SOW, including the standards, specifications and schedule contained in the RI/FS or RI/DS Work Plan.

XIV. WORK

The Work shall be completed in accordance with all requirements of this Interim Consent Order and the SOW, including the standards, specifications, and the time periods set forth in this Interim Consent Order and SOW. The Defendants shall not commence field activities until written approval by the State of the aforementioned Work Plans are received by Defendants.

XV. ADDITIONAL WORK

A. NOTIFICATION OF ADDITIONAL WORK

In the event that the State determines, or the Defendants believe, that additional Work, including RI Work and/or engineering evaluations, is necessary to satisfactorily complete the RI/FS or RI/DS, the State shall provide written notice of such required

additional RI Work to the Defendants, or the Defendants shall provide written notice of proposed additional Work to the State, as appropriate. Corresponding amendments to the Interim Consent Order shall be made in accordance with Section XXXIX.

B. ADDITIONAL WORK PROPOSED BY DEFENDANTS

Any additional Work proposed by Defendants shall be subject to approval by the State in advance of the implementation of any such Work.

C. ADDITIONAL WORK SUBJECT TO DISPUTE RESOLUTION

Any additional Work determined to be necessary by the State shall be completed by Defendants in accordance with the standards, specifications, and schedules determined by the State, subject to the Dispute Resolution provisions provided herein. Any additional Work proposed by the Defendants shall, likewise, be subject to Section XXVIII "Dispute Resolution" provisions if the State and the Defendants cannot reach agreement with regards thereto.

XVI. REPORTS AND REVIEWS OF REPORTS

A. REPORTS

The Defendants shall submit preliminary and final RI Reports, draft, draft final, and final FS Reports and any other plans or reports required by the RI/FS Work Plan and/or RI/DS Work Plan to the State in accordance with the schedule contained in the approved RI/FS Work Plan.

B. REVIEW OF REPORTS

1. Review of Reports. The State agrees to review the preliminary and final RI Reports, draft, draft final, and final FS Reports, and any other preliminary, or final plans or reports specified in the RI/FS Work Plan and/or RI/DS Work Plan, within ninety (90) days of receipt of such plans or reports. The State may extend the time for review for a period not to exceed thirty (30) days by notifying Defendants in writing prior to the expiration of the initial ninety (90) day review period.

2. Specification of Modifications. If the State does not approve any preliminary or final plan or report, the State shall specify, in writing, any deficiencies or required modifications. Failure of the State to respond within the time set forth herein shall not be construed as approval of any plan or report.

3. Informal Negotiation. During the thirty (30) day period following Defendants' receipt of any State disapproval or conditional approval of any preliminary or final plan or report, the parties shall negotiate in good faith with the objective of developing an agreed upon revised plan or report. If the parties fail to reach agreement on the revisions to any plan or report, Defendants may initiate the Dispute Resolution procedures as provided in Section XXVIII. If Defendants fail to initiate the Dispute Resolution procedures within the ten (10) day time period set forth in Section XXVIII, Defendants shall be deemed to have agreed to the specified modification(s).

4. Submission of Revised Plan. Within forty-five (45) days of completion of the informal negotiation period, if the Defendants

do not invoke Dispute Resolution, the Defendants shall submit to the State a revised plan or report which shall incorporate all State modifications or additions. The State Project Manager may establish a longer period for revision of a plan or report by so informing the Defendants in writing.

5. State Right to Terminate Interim Consent Order or to Conduct RI/FS. In the event of subsequent disapproval of any revised plan or report, and if the State prevails in Dispute Resolution, the State retains the right to terminate this Interim Consent Order, perform additional studies and/or conduct a complete or partial RI/FS, and/or enforce the terms of this Interim Consent Order in the appropriate judicial forum.

C. PROGRESS REPORTS

1. The Defendants shall prepare and provide to the Attorney General, IEPA, and USEPA written monthly progress reports which shall contain, at a minimum:

a. A description of the actions which have been taken toward achieving compliance with this Interim Consent Order during the previous month;

b. All results of sampling, tests and summaries of all other raw data received by Defendants or by their agents or contractors during the month and relating to the Contamination at or from the Site;

c. All plans and procedures completed during the past month, including target and actual completion dates for each element or activity, and an explanation of any deviation from

the schedules in the RI/FS Work Plan and/or RI/DS Work Plan schedule;

d. A description of all activities which are scheduled for the next month;

e. Information regarding percentage of completion;

f. A description of any observed detrimental changes in the conditions at or from the Site, such as erosion, or changes in Site security (including access);

g. A description of all actions and deadlines which occurred during the past month, along with each of the Section numbers of this Interim Consent Order, the SOW or any State-approved plan which required said actions; a statement of whether Defendants met all applicable deadlines; if any deadline has been missed, a statement of whether a penalty may be associated with failure to meet that deadline; and a statement regarding whether the penalty has been paid or when the penalty will be paid;

h. If a deadline has been missed, and the relevant portion of the Work is later completed, a statement of the original scheduled completion date in the Interim Consent Order, the SOW or a State-approved plan, the projected date that was given by the Defendants for completion, the actual date such portion of the Work was completed, the date any penalty was mailed, and the amount paid; and

i. Such other information as the State Project Manager may reasonably request in writing.

2. The monthly written progress reports shall be submitted to the IEPA, the Attorney General, and USEPA by the fifteenth (15th) day of each month following the commencement of the activities required in the RI/FS Work Plan and/or RI/DS Work Plan.

3. The date of submission or notification shall be determined by the date of the postmark. The burden of proving that a submission has been timely shall be solely that of the Defendants. If the date for submission of any item or notification required by this Interim Consent Order falls upon a weekend or state or federal holiday, the time period for submission of that item or notification shall be extended to the next working day immediately following the weekend or holiday.

4. Neither failure of the State to expressly approve or disapprove a submission by the Defendants within the specified time period nor the absence of comments shall be construed as approval of such submission.

D. REPORTING TO NATIONAL RESPONSE CENTER, USEPA, AND STATE.

Upon discovery by Defendants of the occurrence of any event during performance of the Work which, pursuant to Section 103 of CERCLA, 42 U.S.C. 9603, requires reporting to the National Response Center (800/424-8802 or current number, if changed), Defendants shall immediately orally notify the State Project Manager and the Illinois Emergency Management Agency (800/782-7860 or current number if changed). In addition to the reporting required by Section 103 of CERCLA and/or Section 304 of the Superfund Amendment and Reauthorization Act of 1986, 42 U.S.C. 9603 and 11004, within fifteen (15) days of the onset of such an event, Defendants shall

furnish to the Attorney General, IEPA, and USEPA a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of any event or occurrence which may give rise to the duty to report under Section 103 of CERCLA, 42 U.S.C. 9603, and 35 Ill. Adm. Code 750.304 and 750.410 of the Illinois Pollution Control Board's Waste Disposal Regulations, Defendants shall submit a report to the Attorney General, IEPA, and USEPA setting forth all actions taken or to be taken to respond thereto. In the event that Defendants are uncertain as to what constitutes the onset or conclusion of an event or occurrence, the Defendants' Project Coordinator shall consult with the State Project Manager.

XVII. ADDRESSES FOR ALL CORRESPONDENCE

A. CORRESPONDENCE ADDRESSES

Documents, including notices, plans, reports, approvals, disapprovals and other correspondence to be submitted pursuant to this Interim Consent Order shall be sent by certified mail, or any other form of mail delivery which records the date of receipt, to the addresses which appear below, or to such other addresses as the IEPA, the Attorney General, USEPA, or the Defendants may hereafter designate in writing:

For State:

1. Paul Jagiello
Illinois EPA
1701 First Avenue
Maywood, Illinois 60153
Phone: (708) 338-7934
Facsimile: (708) 338-7930

2. Rich Lange
Illinois EPA
2200 Churchill Road
P.O. Box 19276
Springfield, Illinois 62794
Phone: (217) 782-0243
Facsimile: (217) 782-3258
3. Elizabeth Wallace
Susan W. Horn
Assistant Attorneys General
Environmental Bureau
100 W. Randolph St., 12th Flr.
Chicago, Illinois 60601
Phone: (312) 814-5396
Facsimile: (312) 814-2549

For Defendants:

1. Scott Wilkinson
DePue Project Coordinator
Mobil Oil Corporation
Superfund Response Group
P.O. Box 1039
Princeton, New Jersey 08543-1039
Phone: (609) 737-6161
Facsimile: (609) 737-6164

For Overnight Delivery:
Building 19
Pennington-Rocky Hill Road
Pennington, New Jersey 08534

2. James F. Frank
Frank & Cowles
7226 N. Walnut
Springfield, IL 62702
Phone: (217) 487-7686
Facsimile: (217) 487-7687
3. Thomas E. Janeck
Zinc Corporation of America
300 Frankfort Road
Monaca, PA 15061-2295
Phone: (412) 773-2284
Facsimile: (412) 773-2217

For USEPA:

1. Deborah Orr
USEPA
77 West Jackson Blvd.
HSRL-65
Chicago, Illinois 60604
Phone: (312) 886-7576
Facsimile: (312) 886-4071

B. CHANGE OF ADDRESS

Any party may change its document recipients by providing ten (10) days advance written notice to all other parties.

C. SUBMISSIONS

Where documents are to be submitted to the State, they are to be submitted to the IEPA and the Attorney General concurrently. All such notices, documents, or reports shall reference the caption and case number of this proceeding, as well as the Site I.D. number assigned by the IEPA.

D. SATISFACTION OF NOTICE

Notice to the individuals listed above in Subsection A shall constitute complete satisfaction of any notice requirement of this Interim Consent Order with respect to the State, USEPA, and Defendants, unless any party subsequently notifies all other parties.

XVIII. COMPLIANCE WITH APPLICABLE LAWS

In addition to statutes and regulations specifically referenced herein, all Work and other activities required of Defendants pursuant to this Interim Consent Order shall be performed in compliance with all applicable federal, state, and local laws and all applicable, or relevant and appropriate, regulations ("ARARs"),

including but not limited to, all Occupational Safety and Health Administration regulations, Department of Transportation regulations, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA") and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. 6901 et seq., Title 40 of the Code of Federal Regulations, 35 Ill. Adm. Code Subtitle G, and such other statutes or regulations as are applicable or relevant and appropriate to the Site and the Contamination at or from the Site. In the event of a conflict in the application of federal, state, or local laws, ordinances and regulations, the Defendants shall notify the State of said conflict and comply with the more/most stringent of such law, ordinance, or regulation.

XIX. PERMITS AND CONTRACTS

A. RESPONSIBILITY TO OBTAIN PERMITS

1. The Defendants shall obtain any federal, state and local permits or approvals which may be necessary for the performance of any Work hereunder. All Work and other activities undertaken by the Defendants pursuant to this Interim Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal permits or approvals. In the event that the State determines that it has the authority to waive permits, the State agrees to waive such permits.

2. Defendants shall obtain all permits or approvals necessary, if any, for off-Site and on-Site work under federal, state, or local law, and shall submit timely applications and requests for any such permits and approvals.

B. CONTRACT LANGUAGE

1. Defendants shall include in all contracts or subcontracts entered into for any portion of the Work required under this Interim Consent Order provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all Work required by such contracts or subcontracts in compliance with this Interim Consent Order and all applicable local, state and federal laws and regulations.

2. The State is not and shall not be held out as a party to any contract entered into by or on behalf of the Defendants in carrying out activities pursuant to the terms of this Interim Consent Order.

C. INTERIM CONSENT ORDER NOT A PERMIT

This Interim Consent Order is not, nor shall it be construed as, nor is it intended by the parties to be, a permit issued pursuant to any local, State or Federal statute or regulation. Nothing in this Interim Consent Order shall be construed as a waiver of any RCRA closure, post-closure, or corrective action requirements.

XX. ACCESS

A. OBTAINING ACCESS AGREEMENTS

To the extent that the Site or other areas where Work is to be performed hereunder is presently owned, or may subsequently be owned, by persons other than those bound by this Interim Consent Order, the Defendants shall obtain, or shall use their best efforts to obtain, access agreements from those owners within thirty (30) days of the entry of this Interim Consent Order (or thirty (30) days

after any subsequent transfer of any interest in title to the Site or other area where Work is to be performed). If performance of the Work under any Work Plan discloses the necessity to perform additional Work on other areas, and the State directs or approves such additional Work, the Defendants shall, within thirty (30) days of approval of an amendment to the Work Plan authorizing that Work, obtain or use their best efforts to obtain, access agreements from the owners of such areas. Such agreements shall provide reasonable and regular access for representatives of the IEPA, the Attorney General, and USEPA, and for the representatives of Defendants, as further specified in the subsection following. In the event that such access agreements are not obtained within the relevant thirty (30) day period described above, the Defendants shall so notify the State in writing within ten (10) days of said failure. Thereafter, the State shall use reasonable efforts to exercise its authority under state law to assist in obtaining access to the Site or other areas. If the State is unable to obtain such access, the State shall so notify the Defendants. Within thirty (30) days of the State's notice, Defendants shall present to the State a reasonable alternative to obtaining access to these areas. The parties reserve the right to seek amendment of this Interim Consent Order with respect to such areas to which Defendants have been unable to obtain access. All time periods specified herein shall be extended for a period not to exceed the time taken by the parties in their efforts to obtain access.

B. ACCESS ACTIVITIES.

1. Access Rights. Representatives of IEPA, the Attorney General, USEPA, the Defendants and the contractors of Defendants shall be allowed reasonable and regular access to the Site and other areas where Work is to be performed by the Defendants, for purposes including, but not limited to: inspecting records, operating logs and contracts related to the Site; reviewing the progress of the Defendants in carrying out the terms of this Interim Consent Order; conducting such tests, inspections, and sampling as the IEPA, Attorney General or USEPA may deem necessary; using a camera, including a video camera, sound recording, or other documentary type equipment; and verifying the data submitted to the IEPA, Attorney General and USEPA by the Defendants hereunder. The Defendants shall permit such representatives to inspect and copy any and all records, files, photographs, documents, and other writings, including all sampling and monitoring data, relevant to the Contamination at or from the Site, subject to such confidentiality claims as are specified in Section XXII herein. Defendants shall cooperate and shall not interfere with the access and inspection rights of IEPA, the Attorney General, and USEPA. The State shall furnish copies of all such sampling results, photographs, films, and other information obtained at the request of the Defendants.

2. Health and Safety Plans. All persons with access to the Site pursuant to this Interim Consent Order shall comply with all Site health and safety plans.

3. Interim Consent Order Not Restrictive. Nothing herein shall be construed as restricting the inspection or access authority

of the IEPA, the Attorney General, or USEPA under any law or regulation.

**XXI. DEFENDANTS' PROJECT COORDINATORS
AND STATE PROJECT MANAGER**

A. DEFENDANTS' PROJECT COORDINATORS

1. Notification. The State and the USEPA are hereby notified that Scott Wilkinson and James Frank, whose titles, addresses, telephone numbers and facsimile numbers appear below, shall be Project Coordinators for the Defendants:

Scott Wilkinson
DePue Project Coordinator
Mobil Oil Corporation
Superfund Response Group
P.O. Box 1039
Princeton, New Jersey 08543-1039
Phone: 609/737-6161
Facsimile: 609/737-6164

For Overnight Delivery:
Pennington -- Rocky Hill Road
Pennington, N.J. 08534

James F. Frank
Frank and Cowles
7226 N. Walnut
Springfield, IL 62707
Phone: 217/487-7686
Facsimile: 217/487-7687

2. State Approval. The State has approved Scott Wilkinson and James Frank as Defendants' selection as Project Coordinators. The State reserves the right to disapprove the selection of any contractor, subcontractor, or replacement Project Coordinator, contractor or subcontractor. Such disapproval shall not be unreasonably exercised. Defendants may use their own employees to perform those tasks required under this Interim Consent Order for which such use is specifically allowed in the approved Work Plan.

3. Authority of Defendants' Project Coordinators. All Work to be performed by the Defendants pursuant to this Interim Consent Order, including RI/FS Work Plans, reports and studies, shall be performed under the direction and supervision of one of the State-approved Project Coordinators. The Defendants' Project Coordinators, together with the State Project Manager, shall be responsible for overseeing the implementation of the Work and other activities required under this Interim Consent Order and for maintaining access to the Site and other areas on which Work is to be performed.

4. Notification of Endangerment. The Defendants' Project Coordinator shall orally notify the State Project Manager, or, if unavailable, the Alternate State Project Manager or designate, immediately upon knowledge of the occurrence of any event which may possibly present an imminent and substantial endangerment to human health, welfare, or the environment at the Site. The oral notice shall be followed by written notification to the IEPA, the Attorney General, and USEPA within two (2) business days which explains the event, any action taken to eliminate the threat, and the precautions taken to avoid recurrence of a similar threat. In the event that the Defendants' Project Coordinator is uncertain whether an event or condition may present an imminent and substantial endangerment, the Defendants' Project Coordinator shall consult with the State Project Manager.

5. Presence On-Site. One of the Defendants' Project Coordinators for the Site or a responsible person in charge shall be present at the Site during all hours of Work performed pursuant to

this Interim Consent Order and the SOW. One of the Defendants' Project Coordinators or their approved Alternate shall be on call at all times during the pendency of this Interim Consent Order.

B. STATE PROJECT MANAGER.

1. Notification. Within seven (7) days after the entry of this Interim Consent Order, the IEPA shall designate a State Project Manager for the Site and shall notify all parties in writing, of the name, title, address, telephone, and facsimile number of the State Project Manager. The State Project Manager shall be an employee of IEPA.

2. Authority of State Project Manager. The State Project Manager, together with the Defendants' Project Coordinators, shall be responsible for overseeing the implementation of the Work pursuant to this Interim Consent Order. The State Project Manager will be the State's designated representative for the Site. As between the parties to this Interim Consent Order, the State Project Manager may exercise such authority as is vested in USEPA Project Managers by applicable provisions of CERCLA, the ICP, and the NCP, as amended.

3. No Modification of Interim Consent Order. Except as provided herein, in no event shall the State Project Manager have the authority to modify this Interim Consent Order or the attached SOW.

C. HALTING ACTIVITY.

1. Authority to Halt Activity. The State Project Manager shall have the authority to halt, suspend, conduct, or direct any portion of Work or other activity being undertaken by Defendants

pursuant to this Interim Consent Order, and to direct any response action undertaken by the State, when conditions at or from the Site present an imminent and substantial endangerment to public health, welfare or the environment.

2. Authority to Require Performance. If the State Project Manager halts or suspends any portion of Work or other activity pursuant to this Subsection, he or she shall then have the authority to require the Defendants to perform or repeat performance of that portion of Work or activity in a manner consistent with this Interim Consent Order, the SOW, any approved plans submitted hereunder, the ICP, and the NCP. The State Project Manager shall direct the performance of any such portion of Work or activity in a manner that will avoid or mitigate the existing imminent and substantial endangerment to health, welfare or the environment.

D. COMMUNICATIONS BETWEEN DEFENDANTS' PROJECT COORDINATORS AND STATE PROJECT MANAGER.

To the maximum extent possible, communications between the State and the Defendants, and all documents, reports, approvals and other correspondence concerning the Work and other activities performed pursuant to this Interim Consent Order and the SOW, shall be directed through the Defendants' Project Coordinators and the State Project Manager. During implementation of the SOW, the Defendants' Project Coordinators and State Project Manager shall, whenever possible, operate by consensus, and shall attempt in good faith to resolve disputes informally through discussion of the issues.

E. DISPUTES

If the parties disagree with any direction or order given by the State Project Manager, the matter shall be resolved in accordance with Section XXVIII "Dispute Resolution." However, when the State Project Manager determines that conditions at the Facility may present an imminent and substantial endangerment to the public health or welfare or the environment pursuant to Section XXI(C)(1) above, the Defendants shall comply with his/her orders immediately. If the Defendants disagree with the State Project Manager that conditions at the Facility require work to be halted immediately or a particular response action taken as provided in this section, the Defendants may immediately bring the matter before this Court for a determination of the issues involved. The Defendants shall comply with the State Project Manager's orders while seeking judicial review of the orders.

F. MISCELLANEOUS

1. Absence of State Project Manager. The absence of the State Project Manager or his or her alternate from the Site shall not be cause for termination of Work.

2. Alternate State Project Manager/Defendants' Alternate Project Coordinator. The State may designate an Alternate State Project Manager and the Defendants may designate one or more Alternate Project Coordinators from time to time. The State's Alternate Project Manager shall be an employee of IEPA. The Defendants' Alternate Project Coordinator(s) and responsible person in charge shall be technically qualified and approved in writing in advance by the State. The Defendants' Alternate Project

Coordinator(s) and responsible person in charge shall be an employee(s) of the Defendants or Defendants' engineering firm(s) responsible for the Work. The State and the Defendants shall inform each other and USEPA of the name, address, and business telephone and facsimile numbers of their alternates.

3. Authority of Alternates. The Alternate State Project Manager and the Defendants' Alternate Project Coordinator shall, respectively, have the same authority as the State Project Manager and the Defendants' Project Coordinators except that the orders of the State Project Manager or Defendants' Project Coordinators shall control over the orders of the respective alternate in the event of any conflict.

4. Change. The Defendants and the State shall each have the right to change their Project Coordinators or Project Manager and alternate(s). The Defendants shall only accomplish such a change upon written approval by the State. The Defendants shall notify the State in writing at least fourteen (14) days prior to the proposed change. Failure of the Defendants to designate a substitute Project Coordinator and/or Alternate, in accordance with the terms herein, and provide the information required in paragraph (A) (1) above, shall not constitute force majeure hereunder.

XXII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. EXCHANGE OF INFORMATION

Upon request, the parties agree to exchange additional or supplemental information about the Site and areas or media impacted by the Contamination at or from the Site, to the extent such

information is not privileged and is in the possession of the parties, their respective Project Manager(s), or their contractor(s). Within thirty (30) days of entry of this Interim Consent Order, the Defendants shall submit the Site Assessment Plan to the State in accordance with Section XIII(B)(1). This requirement is subject to the provisions of Subsection E of this Section, governing confidentiality claims.

B. SUBMITTAL OF NEW INFORMATION

The Defendants shall provide copies to the IEPA, the Attorney General, and USEPA of all sampling and/or tests or other data generated or obtained by the Defendants, or on behalf of the Defendants, after the entry of this Interim Consent Order relevant to the Contamination at or from the Site, with the written monthly progress reports required by Section XVI(C) herein, and shall summarize all new information obtained in said monthly progress reports. Upon the request of the Defendants, the State shall provide copies to the Defendants of all sampling and/or tests or other data generated or obtained by the State, or on behalf of the State, after entry of this Interim Consent Order relevant to the Contamination at or from the Site. Additionally, Defendants shall permit representatives of IEPA, the Attorney General, and USEPA to inspect and copy all documents in the possession of the Defendants or their agents, parents, subsidiaries, or divisions which pertain to the RI/FS, or other activities or Work to be performed under this Interim Consent Order, except for privileged documents, documents which constitute attorney work product, and documents, including

trade secrets, unrelated to implementation of this Interim Consent Order.

C. NOTICE PRIOR TO SAMPLE DISPOSAL

Before disposal of any soil, sediment, waste, water, or other chemical sample by Defendants or their agents or contractors, Defendants shall give the State fifteen (15) days advance notice and an opportunity to take possession of such sample.

D. SPLIT SAMPLES

The sampling party shall provide split or duplicate samples to the other party of any samples collected by the sampling party. Split or duplicate samples shall be provided upon written request. The sampling party shall notify all parties, including, but not limited to, Defendants, the IEPA, the Attorney General, and USEPA at least five (5) days in advance of any sample collection activity. The sampling party shall provide copies of the results of its tests on any such samples to all parties. Such split samples and any tests thereof shall be considered validated, material, and accurate in any Dispute Resolution proceeding or other proceeding to enforce this Interim Consent Order if they have met the quality assurance requirements of this Interim Consent Order, except to the extent that age or the manner in which those samples were handled can be demonstrated to render the results of any testing of those split samples scientifically unacceptable. In addition, the State shall have the right to take any additional samples and perform any

additional tests that are within the scope of the RI/FS Work Plan that the State deems necessary.

E. CONFIDENTIALITY CLAIMS

1. Assertion of Confidentiality. Pursuant to, and consistent with, applicable state or federal laws or regulations, including 2 Ill. Adm. Code Part 1827, as amended, the Defendants may assert a confidentiality claim with respect to any information requested or submitted pursuant to the terms of this Interim Consent Order. Defendants shall, in good faith, substantiate a claim of confidentiality within thirty (30) days following a request for substantiation from the State.

2. Restrictions on Confidentiality Claims. Any such confidentiality claim shall be subject to the restrictions set forth in Sections 7 and 7.1 of the Act, 415 ILCS 5/7 and 7.1 (1994), or in any applicable federal statute or regulation. For the purposes of implementing this Interim Consent Order, information determined to be confidential by the State in accordance with applicable state or federal laws or regulations shall be afforded the full protection provided by such laws and regulations. If no confidentiality claim accompanies information when it is submitted to the State, or if information claimed as confidential is determined by the State not to be confidential following a request for substantiation documentation, the information may be made available to the public by the State without further notice to Defendants.

3. Attorney Work Product/Privilege Claims. Documents which are asserted to be attorney work product, attorney-client communications, or subject to privilege under law shall not be

subject to inspection and copying prior to court resolution of the issue. The party claiming the privilege shall give a clear identification of the title and subject matter of each document for which a privilege is asserted, and a full explanation as to why the privilege is applicable to the document. The provisions of Section XXVIII regarding Dispute Resolution shall apply to disputes over confidentiality. For purposes of this Interim Consent Order, "privileged documents" and "attorney work product" shall not include collected sampling data related to Contamination at or from the Site, laboratory analyses of such samples, or investigative reports, if they are required by this Interim Consent Order, even if prepared at the request of any parties' attorneys.

4. Sampling Data. Defendants shall provide to IEPA, the Attorney General, and/or USEPA, upon request, any and all sampling data related to the Contamination at or from the Site which is collected or otherwise obtained after the entry of this Interim Consent Order, and laboratory analyses of such samples. The State shall provide to Defendants, upon request, any and all sampling data and laboratory analyses of said samples related to the Contamination at or from the Site which are collected by the State or otherwise obtained from persons other than Defendants after entry of this Interim Consent Order. All sampling data acquired or generated by the parties in or during performance of the Work that is the subject of this Interim Consent Order shall not be claimed as confidential by any party.

XXIII. QUALITY ASSURANCE

A. QAPP

Prior to the commencement of any monitoring under this Interim Consent Order, Defendants shall submit, as part of the RI/FS Work Plan, draft and final Quality Assurance Project Plans ("QAPPs") to the State that are consistent with the RI/FS Work Plan and the guidelines referenced in Subsection B of this Section. Such draft and final QAPPs shall be submitted in accordance with the schedule in the SOW, Attachment 2 hereto. Within forty-five (45) days of receipt of the draft and final QAPPs, the State will notify Defendants in writing of any required modifications, approval, conditional approval, or disapproval of the QAPPs. Upon notification of disapproval, conditional approval or any need for modifications, Defendants shall make all required modifications to the QAPPs and/or shall conform with any stipulated conditions of a conditional approval notice. The parties shall negotiate in good faith to resolve any dispute.

B. QUALITY ASSURANCE GUIDANCE

The Defendants shall use quality assurance, quality control, and chain of custody procedures throughout all data collection activities, in accordance with the latest edition of each of the following:

1. "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans" QAMS-005/80 (USEPA-600/4-83-004), Office of Monitoring Systems and Quality Assurance, Office of Research and Development, USEPA, February 1983;

2. "State-Lead Quality Assurance Project Plan Guidance", Appendix L to "State Participation in the Superfund Remedial Program", USEPA OERR, February 1984, revised January, 1986;
3. "Guidance for Preparation of Combined Work/Quality Assurance Project Plans for Water Monitoring", USEPA OWRS, May 1984;
4. "NEIC Policies and Procedures", EPA-330-9-78-001R, USEPA OLEC, May 1978, rev. February 1983;
5. "Principles of Environmental Analysis", Lawrence H. Keith, et al., Anal. Chem., Vol. 55, No. 14, December 1983;
6. "Quality Assurance of Chemical Measurements", John K. Taylor, Anal. Chem. Vol. 53, No. 14, December 1981;
7. "Content Requirements for Quality Assurance Project Plan", Chen Wen Tsai, USEPA Region V QAO, Revised January, 1989;
8. "Data Quality Objectives for Remedial Response Activities", Vol. 1 Development Process, USEPA OERR, EPA-540/G-87-003;
9. "Data Quality Objectives for Remedial Response Activities", Vol. 2 Example Scenario, USEPA OERR, EPA-540/G-87-003;
10. "Final Standard Quality Assurance Project Plan Content Document", USEPA, June, 1989;
11. "Functional Guidelines for Evaluating Organics Analyses", USEPA, February, 1988; and
12. "Functional Guidelines for Evaluating Inorganics Analyses", USEPA, July, 1988.

C. CONSULTATION WITH STATE PROJECT MANAGER

The Defendants shall consult with the State Project Manager in planning for, and prior to, any sampling and analysis required by the RI/FS Work Plan as deemed necessary by the parties.

D. VERIFIED DATA AS EVIDENCE

Verified sampling data generated consistent with the State-approved QAPP(s) shall be admissible as evidence, over any objection, in any Dispute Resolution proceeding under Section XXVIII, except to the extent that age or the manner in which those samples were handled can be demonstrated to render the results scientifically unacceptable.

E. QUALITY ASSURANCE REQUIREMENTS

In order to provide quality assurance and maintain quality control with respect to all samples collected pursuant to this Interim Consent Order, the Defendants shall:

1. Ensure that IEPA, Attorney General, and USEPA personnel and/or their authorized representatives are allowed access to any laboratories and personnel utilized by the Defendants for analyses;
2. Ensure that all sampling and analyses are performed according to USEPA methods or other methods deemed satisfactory by the State; and
3. Ensure that any laboratories utilized by the Defendants for analyses participate in a USEPA quality assurance/quality control program, or one which is equivalent to that which is followed by the USEPA, and which is consistent with USEPA document QAMS-005-80. As part of such a program, and upon request by the State, such laboratories shall perform analyses of samples provided

by the State to demonstrate the quality of analytical data for each such laboratory.

XXIV. FORCE MAJEURE

Any failure by the Defendants to comply with any of the requirements of this Interim Consent Order, or plans incorporated hereunder, shall not be a violation of this Interim Consent Order if such failure to comply is the result of actions by persons or events beyond the reasonable control of the Defendants. Such events include, but are not limited to, inability to obtain materials or otherwise perform due to an act of God, act of public enemy, war, blockade, public riot, lightning, storm, flood, or labor dispute. Increased costs shall not be considered circumstances beyond the control of the Defendants.

When circumstances have occurred which cause or may cause a violation of any provision of this Interim Consent Order, the Defendants shall orally notify the State as soon as practicable but not later than two (2) business days after learning of such occurrence. Within ten (10) business days of learning of such occurrence, the Defendants shall submit to the State a written detailed explanation of the precise cause or causes of the claimed occurrence which caused or will cause the failure to comply, the measures taken or to be taken to prevent or minimize the failure to comply, and the timetable by which those measures will be implemented. The Defendants shall adopt all reasonable measures to avoid or minimize any such failure to comply. Failure to abide by

these notice provisions shall constitute a waiver by Defendants of any claim or defense on the basis of force majeure.

If the State agrees that the failure to comply has been or will be caused by circumstances beyond the reasonable control of the Defendants, the parties may agree to an extension of time for performance hereunder for a period equal to, but not exceeding, the delay resulting from such circumstances. The State shall be precluded from invoking any remedy otherwise available to it under the provisions of this Interim Consent Order to the extent such noncompliance or delay in achieving compliance is caused by said event. If the State does not agree that the reason for the delay or noncompliance was beyond the reasonable control of the Defendants, such dispute or disputes shall be resolved by the court pursuant to Section XXVIII, "Dispute Resolution." The Defendants shall have the burden of going forward and proving by a preponderance of the evidence that the circumstances alleged as the cause of the delay or noncompliance were beyond their reasonable control.

XXV. STIPULATED PENALTIES

A. VIOLATIONS REQUIRING STIPULATED PENALTIES.

In the event Defendants fail to satisfy any requirement of this Interim Consent Order, including any failure to complete any activity under the SOW, or to submit any plan, within the time schedules specified in this Interim Consent Order or attachments hereto, Defendants shall pay a stipulated penalty to the State of \$2,000.00 per day unless such failure to perform is excused pursuant to Section XXIV.

B. ACCRUAL OF PENALTIES

1. Penalties and interest on unpaid penalties shall begin to accrue on the day that complete performance of any task, or any other portion of Work, submission of any plan, report, or document, or other obligation under this Interim Consent Order, is due, and that complete performance is not provided by the Defendants, and shall continue to accrue through the day that the noncompliance has been fully corrected. Such penalties shall accrue regardless of whether the State has notified the Defendants of their failure to perform under this Interim Consent Order, of a violation, or of their failure to submit a required plan, report or document, and regardless of whether the Defendants have invoked the Dispute Resolution process.

2. Penalties owed to the State under this Section shall be payable within thirty (30) days of the last day of the month in which Defendants are required to provide complete performance of any task or other portion of Work, or of the date when the Defendants were required to submit any plan, report, or document, regardless of whether the State has notified the Defendants of their failure to perform under this Interim Consent Order, except to the extent that Subsection G of this Section applies.

C. NOTICE OF A VIOLATION

Following the State's determination that Defendants have failed to complete performance of any task or other portion of Work, or failed to submit a required plan, report, or document, the State may give Defendants written notification of same and describe the failure to perform, the violation, or the plan, report, or document

which was required. If given, this notice may also indicate the amount of penalties then due. If notice has been given, all penalties owed to the State under this Section and any interest thereon that have not been previously paid shall be payable within thirty (30) days of receipt of a notification from the State of violation except to the extent that Subsection G of this Section applies or Dispute Resolution proceedings have been invoked. Otherwise, penalties shall be due as provided in Section XXV(B)(2) above.

D. RECIPIENT OF PENALTY PAYMENT

Stipulated penalties and any interest and handling charges shall be paid by certified check made payable to the "Treasurer, State of Illinois," with a designation on the check indicating that it is for the "Illinois Hazardous Waste Fund", and shall be delivered to the Fiscal Services Section, Accounts Receivable Unit, IEPA, 2200 Churchill Road, P.O. Box 19276, Springfield, Illinois 62794-9276. The check shall contain Defendants' complete and correct address, the Site name and I.D. number, and the civil action number. Copies shall be mailed to the State Project Manager and the Attorney General.

E. OBLIGATION CONTINUES

Neither the filing of a petition to resolve a dispute nor the payment of penalties shall stay or alter in any way Defendants' obligation to perform all Work and other activities required by this Interim Consent Order, the SOW, and any State-approved plan.

F. PENALTY DISPUTE PROCESS

1. Defendants may dispute the State's right to any stipulated penalties by invoking the Dispute Resolution procedures under Section XXVIII herein. Penalties shall accrue during the Dispute Resolution period. Such penalties shall be paid by the Defendants into a commercial interest bearing escrow account approved by the State and established by the Defendants specifically for penalties accruing during that period. Any penalties deposited into said escrow account and interest accrued thereon shall be held in trust for the benefit of the State and shall remain in said escrow account until a decision is rendered in a Final Administrative Order Resolving Dispute or by this court if an Administrative Order Resolving Dispute is appealed.

2. If a Final Administrative Order Resolving Dispute is issued pursuant to Section XXVIII(D) in favor of the State, the Defendants shall, within seven (7) days of receipt of the Final Administrative Order Resolving Dispute, make payment to the State of all penalties and interest which accrued as the result of the specific dispute, as specified above, or notify the State in writing of its intention to appeal said Final Administrative Order Resolving Dispute.

3. If the Defendants prevail on the basis of a Final Administrative Order Resolving Dispute or the order of this court, no penalties or accrued interest shall be payable.

4. If the State prevails on the basis of the order of this court, the Defendants shall make payments to the State of all

penalties imposed against the Defendants and interest accrued thereon within seven (7) days of receipt of the court's order.

G. NO PENALTY IF FORCE MAJEURE

No penalties or interest shall be payable for violations of this Interim Consent Order that are determined to be attributable to force majeure, pursuant to Section XXIV, provided, however, that penalties and interest shall accrue and be paid into an escrow account as described above, until such time as a Final Administrative Order determines that a delay or stoppage of Work was not attributable to force majeure.

H. PENALTIES NOT DEDUCTIBLE

The parties agree that any payments made under this Section shall not be tax deductible, and the Defendants agree that they shall make no claim of deductibility in filing any tax return.

I. INTEREST ON PENALTIES

Interest shall accrue on any amounts for overdue penalties at the rate provided in Section 42(g) of the Act, 415 ILCS 5/42(g) (1994). A handling charge of \$25.00 shall be assessed at the end of each thirty (30) day late period.

J. PENALTY COLLECTION

If Defendants fail to pay stipulated penalties, the State may institute proceedings to collect the penalties. Collection activities shall be a response cost reimbursable by Defendants. In lieu of the stipulated penalties provisions of this Section, the State may elect to assess civil penalties and/or to bring an action in court to enforce the provisions of this Interim Consent Order. Payment of stipulated penalties shall not preclude the State from

electing to pursue any other remedy or sanction to enforce this Interim Consent Order, and nothing shall preclude the State from seeking statutory penalties against Defendants for violations of statutory or regulatory requirements.

XXVI. HORSEHEAD: PENALTY FOR NPDES PERMIT VIOLATIONS:
INTERIM LIMITS; CONTINGENT PENALTIES

A. PENALTY

Within thirty (30) days from the date of entry of this Interim Consent Order, HORSEHEAD INDUSTRIES, INC. ("Horsehead") shall pay to the State of Illinois, sixty-thousand dollars (\$60,000.00) in settlement of the violations of the Pollution Control Board Water Regulations alleged against Horsehead in the Complaint. Payment shall be made by certified or cashier's check or money order drawn to the order of the "Treasurer of the State of Illinois", designated to the "Environmental Protection Trust Fund". The check shall be sent to:

Illinois Environmental Protection Agency
Fiscal Services Section
2200 Churchill Road
P.O. Box 19276
Springfield, IL 62794-9276

A copy of the check shall be sent to:

Elizabeth Wallace/Susan Horn
Assistant Attorney General
Environmental Bureau
100 W. Randolph St., 12th Flr.
Chicago, IL 60601

The name and number of the case and Horsehead's Federal Employer Identification Number shall be written on its check.

B. INTERIM DISCHARGE LIMITS

Horsehead shall maintain the sampling frequencies as set forth in NPDES Permit No. IL 0052183. Beginning immediately, and continuing to a completion date to be specified in the approved schedule developed pursuant to Item 4, Attachment 1 of the Interim Consent Order which addresses performance of response actions for the collection and treatment of water containing metals above regulatory limits, the following interim concentration limits shall be in effect:

<u>Parameter</u>	<u>Daily Maximum mg/l</u>
Total Suspended Solids	200
Zinc	300
Cadmium	5.0
Copper	1.5
Iron	15.0
Manganese	12.0
Nickel	0.1
Lead	0.25

C. CONTINGENT PENALTIES

1. Interim Limits. If Horsehead fails to achieve compliance with its daily maximum interim discharge limits as set forth in Subsection B. above, Horsehead shall pay a contingent penalty of \$1,000.00 per day per parameter exceeded of any daily maximum limitation.

2. Within thirty (30) days of the completion date specified in the approved schedule developed pursuant to Item 4, Attachment 1 of the Interim Consent Order for the collection and treatment of water containing metals above regulatory limits, Horsehead may request the IEPA to withdraw NPDES Permit No. IL0052183.

3. If any penalties are owed, Horsehead shall pay them within thirty (30) days of the due date of the discharge monitoring report indicating the non-compliance. Penalties shall be paid by certified check payable to the Treasurer of the State of Illinois and designated to the Environmental Protection Trust Fund and submitted to:

Illinois Environmental Protection Agency
Fiscal Services Section
2200 Churchill Rd., P.O. Box 19276
Springfield, Illinois 62794-9276

The name and number of the case and Horsehead's Federal Employer Identification Number shall appear on the certified check.

Notice of payment of any contingent penalties shall be made to:

BOW Deputy Counsel
Illinois Environmental Protection Agency
2200 Churchill Road, P.O. Box 19276
Springfield, Illinois 62794-9276

Office of Attorney General
Elizabeth Wallace/Susan Horn
Environmental Bureau
100 W. Randolph St., 12th Flr.
Chicago, Illinois 60601

4. Mobil Oil Corporation and Viacom International Inc. shall not be subject to this Section.

XXVII. INTERIM WATER TREATMENT PLANT

A. PLAN FOR COLLECTION AND TREATMENT OF WATER

Groundwater and surface water run-off, which may contain metals above regulatory limits, currently discharge into the ditch at the facility which empties into DePue Lake. A portion of the discharge from the facility which flows into DePue Lake is the discharge from Outfall 001 permitted by NPDES Permit No. IL0052183 ("the Outfall

001 discharge"). NPDES Permit No. IL0052183 is issued to Zinc Corporation of America which is an unincorporated division of Horsehead. Within three (3) years from the date that the interim water treatment plant described immediately below is on-line, the Defendants shall comply with then-applicable regulatory limits for discharges from the Site into waters of the State. In order to treat the water discharging into DePue Lake during the three (3) year period, the Defendants shall construct and install an interim water treatment plant (the "interim plant") in accordance with the plans and specifications which are required in the SOW. The interim plant shall discharge treated water into DePue Lake.

The Outfall 001 discharge, together with the discharges described in the SOW (Attachment 1, Item 4), shall be collected and treated by the interim plant so long as the combined influent to the interim plant is below twice the design average flow ("DAF"). (The DAF of the interim plant shall be approximately 50 gallons per minute). If the flow rate to the interim plant's collection system exceeds twice the DAF, or 100 gallons per minute, the excess flow from the Outfall 001 discharge shall be discharged to DePue Lake. Other appropriate influent may also be discharged to DePue Lake in the event the influent flow to the interim plant's collection system continues to exceed 100 gallons per minute after the Outfall 001 discharge has been diverted.

B. INTERIM LIMITS

The interim plant shall substantially decrease the concentration levels of cadmium, copper, iron, zinc, manganese, lead, nickel and total suspended solids ("TSS"); however, due to the

anticipated variations in influent flow rate to the interim plant and other factors, the interim plant will be unable to treat the water to within current regulatory limits. Therefore, from the date that the interim plant is on-line and for three years thereafter, the following limits and conditions shall remain in effect for the discharge from the interim plant:

Design Average Flow = 50 gallons per minute.
Design Maximum Flow = 100 gallons per minute.

<u>Sample Parameter</u>	<u>LIMITS</u> <u>mg/l</u>		<u>Sample Frequency</u>	<u>Type</u>
	<u>Monthly Avg.</u>	<u>Daily Max.</u>		
Cadmium	0.5	1	1/week	Composite
Copper	1	2	"	"
Iron	2	4	"	"
Zinc	10	20	"	"
Manganese	5	10	"	"
Lead	0.5	1	"	"
Nickel	1	2	"	"
TSS	50	100	"	"
pH	shall be in the range of 6-9			

Conditions

1. Samples shall be taken at the point of discharge from the interim plant, prior to mixing with any other water.
2. Sample results shall be reported to the Agency in a tabulated, organized form by the 15th of the following month in which they were taken. The report shall be submitted to:

Illinois Environmental Protection Agency
Compliance Assurance Section
2200 Churchill Road
P.O. Box 19276
Springfield, IL 62794

A copy of the report shall be included in the monthly progress report required by Item 12 in Attachment 1 of the Interim Consent Order. The monthly report shall include the date, time and place of sampling, the date analysis was performed, the person or company who performed the analysis, the analytical methods used and the results of such analysis.

3. The composite sample shall be a 24-hour composite, which is a combination of at least three (3) equal sample aliquots of at least 100 milliliters, collected at periodic intervals during the operating hours of a 24-hour period.

4. When influent flows to the interim plant's collection system exceed 100 gallons per minute, or in the event of an unavoidable bypass or upset of the interim plant, including its collection system, as defined by 40 CFR 122.41(m)4(i)(A) and (B) and (n)(1), the excess influent or any unavoidable bypass or upset flow may be bypassed directly to DePue Lake and shall be considered and subject to Section XXIV, Force Majeure. The Outfall 001 discharge shall be the only influent authorized to bypass the interim plant unless the influent flow to the plant's collection system continues to exceed 100 gallons per minute after the Outfall 001 discharge has been diverted. Advance authorization from the State to so bypass shall be obtained whenever practicable. When advance authorization is not practicable, verbal notice shall be given to the state

immediately and formal written notice shall be submitted within 24 hours consistent with 40 CFR 122.41(m)(3)(ii).

C. CONTINGENT PENALTIES

1. Interim Limits. If the Defendants fail to achieve compliance with the daily maximum and monthly average interim discharge limits as set forth in paragraph B above as reported in their monthly reports, or as otherwise found by this Court, the Defendants shall pay a contingent penalty of \$250.00 per day per parameter exceeded of any daily maximum limitation and \$1,000.00 per parameter exceeded for each month during which an exceedance of any monthly average limitation occurs.

2. Payment of Penalties. Any penalties incurred shall be paid within thirty (30) days of the due date of the discharge monitoring report indicating the noncompliance in the manner provided in Section XXV(D).

XXVIII. DISPUTE RESOLUTION

A. INFORMAL EFFORTS/NOTICE OF DISPUTE

Except as provided in Section XXVIII(I), the parties agree that all matters or disputes which may arise between them regarding or pursuant to this Interim Consent Order shall be governed by the terms of this Section XXVIII. The parties shall use their best efforts to informally resolve all disputes arising under or with regard to this Interim Consent Order in good faith. The period for informal negotiations shall not exceed thirty (30) days, unless extended by written agreement of the parties. If the parties are unable to resolve said disputes informally, the position advanced by

the state shall be binding. If within ten (10) days of the close of the informal negotiation period Defendants serve a written "Notice of Dispute" upon the State by certified mail the procedures of this Section XXVIII shall be used.

1. Defendants' Statement of Position

Within fourteen (14) days of the service of Notice of Dispute, the Defendants shall serve upon the State a written statement of the issues in dispute, the relevant facts upon which the dispute is based, the position of the Defendants and the technical basis therefor, including factual data, analyses, or opinions supporting its position, and all supporting documentation on which such party relies, and any relief which the Defendants request as a resolution of the dispute (the "Defendants' Statement of Position"). The Defendants' Statement of Position shall be served by certified mail upon all other parties.

2. Responsive Statement of Position

No later than fourteen (14) days after service of the Defendants' Statement of Position, the State shall serve upon Defendants its written Responsive Statement of Position, addressing all the points raised by the Defendants, identifying potential areas of agreement and disagreement, and including supporting documentation. During the thirty (30) days following service of the Responsive Statement of Position, the parties shall attempt to negotiate, in good faith, a resolution of the dispute. In the event that these time periods for exchange of Statements of Position may cause a delay in the Work, they may be shortened, at the discretion of the State.

B. TIMING OF SERVICE

If there is any question regarding when service of a Notice of Dispute or Statement of Position was effected, the date of service of that Notice of Dispute or Statement shall control for purposes of service of subsequent Statements and/or Responsive Statements, as evidenced by the return receipts from certified mailings.

C. ADMINISTRATIVE RECORD OF DISPUTE

An Administrative Record of Dispute under this Section shall be maintained by the State. The record shall include the written Notice of Dispute, the Statement of Position, the Responsive Statement of Position, and any other relevant information provided by the parties. The record shall be available for review by all parties.

D. ADMINISTRATIVE ORDER RESOLVING DISPUTE

Following the expiration of the thirty (30) day negotiation period provided under paragraph (A) (2) above, the Manager of the IEPA Bureau of Land or his/her delegate, in consultation with the Attorney General, shall issue a Final Administrative Order Resolving Dispute based solely on a review of the Administrative Record for the specific dispute and shall fully explain the basis for the order. The Final Administrative Order Resolving Dispute shall be subject to the rights of judicial review set forth below.

E. JUDICIAL REVIEW

The Defendants shall have the right to appeal to this court any Final Administrative Order Resolving Dispute, provided that Defendants file a Notice of Judicial Appeal within seven (7) days of receipt of such Final Administrative Order Resolving Dispute as

provided in Section XXVIII(D). Judicial review shall be conducted solely on the Administrative Record of Dispute prepared under this Section. The Defendants shall have the burden of proving that the Final Administrative Order Resolving Dispute is arbitrary and capricious, is not in accordance with applicable law, or is not in accordance with the objectives and terms of this Interim Consent Order.

F. NO SUSPENSION OF WORK

The invocation of Dispute Resolution proceedings pursuant to this Section shall not stay or otherwise affect the time period for completion of any Work and/or other obligations to be performed under this Interim Consent Order, except the work and/or other obligations that are the subject of the dispute. Upon mutual agreement of the State and the Defendants, any time period may be extended not to exceed the actual time taken to resolve the dispute. If the State agrees to an extension of time pursuant to this Subsection, those portions of the Work and/or other obligations not directly affected by the dispute shall be completed in accordance with the schedule contained in the SOW.

G. ACCRUAL OF PENALTIES

Any penalties and interest thereon for which the Defendants are liable to the State shall accrue during the period of Dispute Resolution, in the manner provided in Section XXV herein. Any such penalties and interest shall be payable to the State in accordance with the provisions of Section XXV.

H. INCORPORATION OF CHANGES

Within thirty (30) days of the resolution of any dispute, whether informally or using the procedures outlined in this Section, the parties shall move the court to amend this Interim Consent Order, the SOW or any State-approved plans, as appropriate, to reflect said resolution of the dispute, and/or to incorporate any additions or modifications required as a result of such Dispute Resolution. The parties' motion to the court shall be accompanied by written documentation of any change, addition, or modification resulting from Dispute Resolution by the State Project Manager. The Defendants shall then proceed with all remaining Work and other required obligations according to the amended Interim Consent Order, SOW, or plan. Technical modifications or additions agreed to pursuant to Section XXXIX(C) herein, which do not result from the Dispute Resolution process provided in this Section, shall be incorporated into this Interim Consent Order, but the thirty (30) day period for filing with the court shall not apply.

I. EXCLUSIONS FROM DISPUTE RESOLUTION.

The following shall be excluded from Dispute Resolution:

1. Actions taken by the State Project Manager when he/she exercises his/her authority to halt, suspend, conduct, or direct any activity required by this Interim Consent Order, or to direct any response action undertaken by the State, when conditions at or from the Site present an imminent and substantial endangerment to public health, welfare, or the environment;

2. Any emergency action taken by the IEPA pursuant to Sections 4(d)(2) and/or 22.2 of the Act, 415 ILCS 5/4(d)(2) and 22.2 (1994);

3. Increases in Defendants' costs or changes in Defendants' economic circumstances;

4. The State's decision whether a PR proposed by the Defendants is an acceptable remedy for the Site.

XXIX. COMMUNITY PARTICIPATION AND PUBLIC COMMENT

The parties shall cooperate in providing RI/FS or RI/DS information to the public. As requested by the State, the Defendants shall participate in the preparation of appropriate information to be disseminated to the public, and in public meetings and hearings which may be held or sponsored by the IEPA. More specifically, the Defendants shall be responsible to participate in the preparation of the following documents and assist in the conduct of the following community participation events to explain activities at or concerning the Site, including the findings of the RI/FS or the RI/DS, in cooperation with and at the direction of the State:

1. Preparation and updating of Site mailing/contact list;
2. Small group informational meetings with citizens and local officials prior to and/or during the conduct of the RI;
3. Establishment of a Site Information Repository in the community affected by the Site, and updating of repository contents;
4. RI Fact Sheet;

5. Distribution of the RI Fact Sheet, and small group meetings in preparation for community-wide RI meeting;
6. Community-wide RI meeting;
7. FS and DS Fact Sheet(s);
8. Distribution of the FS and DS Fact Sheet(s), and conduct of small group, informational meetings with citizens and local officials, prior to the FS and DS Public hearing;
9. Community-wide FS Public Hearing; and
10. Community-wide DS Public Hearing for the selection of PR(s).

If the State decides that a PR is an acceptable remedy, the Defendants shall comply with any and all requirement(s) contained in any applicable USEPA guidance document(s) relating to that PR.

The State shall have the right to approve or disapprove any community relations employee or contractor of the Defendants before they may participate or assist in conducting any community participation activities under this Interim Consent Order. Such approval shall not be unreasonably withheld. The State reserves the right to retain a community participation contractor, and to require the Defendants to pay for all Response Costs incurred by said contractor relative to the Site. The State may, in good faith, determine that any or all of the above ten (10) tasks shall be conducted solely by the State and/or its community participation contractor, or, the State may, at its sole discretion, determine that certain of the above-referenced tasks are not appropriate or necessary given the particular circumstances related to the Site.

XXX. RECORD PRESERVATION

A. RECORDS PRESERVED

The Defendants shall preserve, during the pendency of this Interim Consent Order, and for a minimum of ten (10) years after termination of this Interim Consent Order all documents not subject to the attorney-client privilege and/or any other applicable privilege or protection in the possession, custody, or control of the Defendants which are within the scope of the RI/FS Work Plan including, but not limited to, documents reflecting the results of sampling, tests, or other data or information generated or acquired by said Defendants or on their behalf, within the scope of this RI/FS Work Plan.

B. ACCESS TO RECORDS

The State and USEPA shall have access to the above-referenced documents, and upon request by the IEPA, Attorney General and/or USEPA, the Defendants shall provide all requested documents, or copies of such documents, to the requesting agency(s) or office, subject to the confidentiality provisions of Section XXII herein. After the ten (10) year period of document retention, Defendants shall notify the IEPA, Attorney General, and USEPA in writing at least ninety (90) days prior to the destruction of such documents, and upon request by the IEPA, Attorney General, and/or USEPA, Defendants shall relinquish custody of the documents and/or provide copies thereof to the requesting agency(s) or office.

C. ACCESS TO EMPLOYEES

The parties shall make available, as reasonably as possible, any employees or agents, including the parties' respective Project

Coordinators/Managers, with knowledge of facts concerning the performance of the Work required by this Interim Consent Order and/or the Contamination at or from the Site, for purposes of investigation, information gathering, or testimony related to the Work and/or the Contamination at or from the Site for a period of ten (10) years after termination of this Interim Consent Order. The parties shall make such employees or agents available on a mutually convenient basis upon request by any party.

XXXI. STATE FUNDING: WAIVER OF CLAIMS

Except as provided in Section XXXII(B)(4) herein, the Defendants waive any claims or demands for compensation or payment against the IEPA and Attorney General for or arising out of any Work or other activity performed or expenses incurred pursuant to this Interim Consent Order. Notwithstanding the previous sentence, the Defendants reserve any right which they may have to seek contribution from the IEPA and Attorney General in an appropriate forum for any future acts of gross negligence which cause or contribute to the release of a Hazardous Substance at the Facility. The IEPA and Attorney General reserve all rights and defenses available to them. The Defendants have the burden of going forward and proving by a preponderance of the evidence that actions of the IEPA or Attorney General constitute gross negligence. To the extent not waived herein, the Defendants reserve all rights to seek contribution from any non-party as a responsible party

relative to activities occurring prior to the entry of this Interim Consent Order.

XXXII. RESERVATION OF RIGHTS

A. STATE RESERVATION OF RIGHTS

1. **All Rights Reserved.** The State reserves all rights, powers, and defenses that it may have pursuant to any available legal authority, except as specifically provided in Section XXXV(F) herein.

2. **Right to Sue Persons.** Except as specifically provided in Section XXXV(F), the State expressly reserves the right to sue or continue to sue any person or entity in connection with the Contamination at or from the Site.

3. **No Waiver.** Nothing herein shall be deemed a waiver of any right, power, or defense available to the State relative to any proceeding, action, or claim against it. In addition, nothing herein shall limit the right of the State to defend any action brought against it. This subsection is subject to the provisions of Section XXXV(F) herein.

4. **Additional Action.** Except as specifically provided in Section XXXV(F), nothing herein shall limit or waive the right of the State to enforce this Interim Consent Order, or to take action pursuant to Section 22.2(f) of the Act, 415 ILCS 5/22(f) (1994), or any other section of the Act, or Section 107 of CERCLA, 42 U.S.C. 9607, as amended, for violations of such or other statutory or regulatory requirements. The State reserves the right to take any enforcement action pursuant to any available legal authority,

including the right to seek injunctive relief, monetary penalties, and punitive damages except as provided herein.

5. Response Costs. The State reserves the right to bring an action against the Defendants for recovery of any Response Costs incurred by the State which remain unpaid, except that the State will not bring an action for Response Costs relative to those specific response activities which are satisfactorily completed by the Defendants pursuant to this Interim Consent Order and approved by the State (as more specifically provided in Section XXXV(F) herein).

6. Failure to Perform. Nothing herein shall be construed to release the Defendants from any liability for their failure to perform the Work or associated other activities in accordance with the State-approved RI/FS Work Plan or any other Work Plan. Nothing herein shall be construed to limit or in any way impair the ability of the State to secure satisfaction of the Work or other obligations required of the Defendants pursuant to this Interim Consent Order, in the event that the Defendants fail to perform said Work or obligations to completion in accordance with this Interim Consent Order, the SOW, the State-approved RI/FS Work Plan or any other Work Plan. The parties further expressly agree that this Interim Consent Order and the successful completion and approval of the RI/FS, and associated activities shall not constitute satisfaction of, a waiver of, a release of, or a covenant not to sue for any claim of the State against the Defendants relating to the Contamination at or from the Site including claims to require Defendants to undertake further response actions and claims to seek reimbursement of

Response Costs pursuant to Section 22.2(f) of the Act, 415 ILCS 5/22.2(f) (1994), or Section 107 of CERCLA 42 U.S.C. 9607, except that, upon receipt of a written certification of satisfactory completion from the State, as provided in Section XLV herein, Defendants shall have no further obligations to perform Work or other activities under this Interim Consent Order or to reimburse the State for Response Costs incurred by it (as more specifically provided in Section XXXV(F) herein).

7. Performance of Work and Recovery of Costs. Except as specifically provided in Section XXXV(F), the State reserves the right to undertake any Work relating to Contamination at or from the Site, to the extent Defendants fail to comply with this Interim Consent Order, to undertake response actions in accordance with this Interim Consent Order and SOW, and to seek recovery from the Defendants for any costs incurred in undertaking such actions.

8. Providing Information No Release. In no way does the providing of information to the State or USEPA release Defendants from any enforcement or cost recovery action brought by the State.

9. Not a Party to Contracts. The State is not a party to, and does not assume any liability for, any contract entered into by Defendants in carrying out the Work or other activities required pursuant to this Interim Consent Order.

B. NON-PARTY RELEASE

1. Release for Non-Parties. Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action or demands in law or equity which the parties may have against any person, firm, partnership, or corporation not a party to

this cause of action for any liability it may have at the Site. The parties to this Interim Consent Order expressly reserve all rights, claims, demands, and causes of action they have against any and all other persons and entities who are not parties to this Interim Consent Order, and as to each other for matters not covered hereby.

2. Right to Contribution. The State recognizes that the Defendants may have the right to seek contribution, indemnity and/or other available remedies against any non-party found to be responsible or liable for contribution, indemnity, or otherwise for Response Costs which have been or may be expended by the Defendants in connection with the Contamination at or from the Site, provided such costs are consistent with the ICP and the NCP.

3. Non-Party Injury or Damage. Nothing herein is intended to be a release or settlement of any claim for personal injury or property damage by any person not a party to this Interim Consent Order. This Interim Consent Order and the Defendants' performance hereunder shall not be construed to create any private rights of action.

4. Reservation by Defendants. The Defendants reserve their right to seek judicial review as provided in Sections XXVIII and XXI(E). Defendants reserve all rights they may have to oppose and defend against such claims and actions regarding liability or responsibility in any subsequent proceedings regarding this Site, except proceedings to enforce this Interim Consent Order. The Defendants reserve any rights they may have to bring any action

otherwise available against any person as defined in Section 101(21) of CERCLA, except as specifically provided in Section XXXI herein.

C. NO ADMISSION BY DEFENDANTS AND STIPULATION OF USE

1. No Admission. By entering into this Interim Consent Order, or by taking any action in accordance with it, the Defendants do not admit any of the Findings of Fact, Conclusions of Law, Determinations or any of the allegations contained in this Interim Consent Order, nor do Defendants admit liability for any purpose or admit any issues of law or fact, any wrong doing, or any responsibility for Contamination at or from the Site. Nothing in this Interim Consent Order may be used in any fashion or admitted into evidence in any proceeding except for Dispute Resolution between the parties to this Interim Consent Order, actions in which the Agency is a party that allege injury based in whole or in part on acts or omissions of Defendants in connection with performance under this Interim Consent Order, or proceedings to enforce the terms of this Interim Consent Order.

2. Stipulation of Use. This Interim Consent Order shall be evidence only of the agreements contained herein. However, nothing in this Interim Consent Order shall prohibit its use by the parties hereto to establish its existence and terms or to enforce it.

XXXIII. FORMAL APPROVAL

No informal advice, guidance, suggestions, or comments by the State or USEPA, whether oral or written, regarding reports, plans, specifications, schedules, or any other writing submitted by Defendants, may be construed as relieving Defendants of their

obligations to obtain such formal approvals from the State as may be required by this Interim Consent Order, the SOW, or the State-approved Work Plan.

XXXIV. NO WARRANTY

The State, by its consent to the entry of this Interim Consent Order, does not warrant in any manner that Defendants' complete compliance with this Interim Consent Order will result in future compliance with the provisions of the Act, 35 Ill. Adm. Code Subtitle G, CERCLA, RCRA, the ICP, the NCP, or any future cleanup standards which may be established by the State, as regards the Site and the Contamination at or from the Site. Notwithstanding the State's review and approval of any plans formulated pursuant to this Interim Consent Order, Defendants shall remain solely responsible for compliance with the terms of the Act, 35 Ill. Adm. Code Subtitle G, CERCLA, RCRA, the ICP, the NCP, and any future cleanup standards which may be established by the State, as regards the Site and Contamination at or from the Site.

XXXV. REIMBURSEMENT OF STATE RESPONSE COSTS

A. RESPONSE COSTS INCURRED PRIOR TO ENTRY OF INTERIM CONSENT ORDER

1. **Reimbursement for Attorney General's Response Costs Incurred Prior to Entry of Interim Consent Order.** Within thirty (30) days from the date of entry of this Interim Consent Order, the Defendants shall pay to the Illinois Attorney General the sum of ten-thousand dollars (\$10,000.00) in reimbursement for all Response Costs incurred by the Attorney General prior to the entry of this

Interim Consent Order. Payment shall be made in the manner provided in Subsection C.(1) herein. This amount does not include Response Costs reimbursed, or to be reimbursed by the USEPA pursuant to any cooperative agreement or enforcement management agreement between USEPA and IEPA. This accounting shall not include any costs incurred by USEPA in connection with this Site.

2. Reimbursement for IEPA Response Costs Incurred Prior to January 1, 1995. Within thirty (30) days from the date of entry of this Interim Consent Order, the Defendants shall pay to the IEPA the sum of Sixty-Nine Thousand Eight Hundred and Eighty-Eight Dollars (\$69,888.00) in reimbursement for all Response Costs incurred by the IEPA prior to January 1, 1995. Payment shall be made in the manner provided in Subsection C.(2) herein. This amount does not include Response Costs reimbursed, or to be reimbursed by the USEPA pursuant to any existing cooperative agreement or enforcement management agreement between USEPA and IEPA. This amount does not include any costs incurred by USEPA in connection with this Site.

B. RESPONSE COSTS INCURRED AFTER ENTRY OF INTERIM CONSENT ORDER

1. Attorney General's Response Costs Incurred After Entry of Interim Consent Order. The Attorney General agrees to submit to Defendants a summary accounting of all Response Costs incurred by him/her after the entry of this Interim Consent Order on a quarterly or annual basis, at his/her discretion. Such Response Costs may include, but shall not be limited to, costs for enforcement of this Interim Consent Order. Enforcement costs shall be considered as proper Response Costs if such costs are consistent with the

definition set forth in Section VII. This accounting shall not include any costs incurred by USEPA in connection with this Site.

2. IEPA Response Costs Incurred After December 31, 1994.

IEPA agrees to submit to Defendants a summary accounting of all Response Costs incurred by it after December 31, 1994 on a quarterly or annual basis, at its discretion. Such Response Costs may include, but shall not be limited to, costs for enforcement of this Interim Consent Order. Enforcement costs shall be considered as proper Response Costs if such costs are consistent with the definition set forth in Section VII. This accounting shall not include any costs incurred by USEPA in connection with this Site.

C. PAYMENT REQUIREMENTS

1. Attorney General. Checks for reimbursement of Response Costs of the Attorney General shall be made payable to the "Illinois Attorney General" for deposit in the "State Projects and Court Ordered Distribution Fund," to be used exclusively by the Attorney General for the sole purpose of funding future environmental enforcement efforts, and delivered to the Illinois Attorney General's Office, Chief, Environmental Enforcement Division, 100 West Randolph, 12th Floor, Chicago, Illinois 60601. The name and number of this case, along with the Illinois Site ID number shall appear on all checks. Payments shall be made by certified or corporate checks only. A copy of the transmittal letter and check shall be sent to the State Project Manager.

2. IEPA. Checks for reimbursement of Response Costs of IEPA shall be made payable to the "Treasurer, State of Illinois," and designated on the check for the "Hazardous Waste Fund". The name

and number of this case, along with the Illinois Site ID number shall appear on all checks. The checks shall be delivered to: Fiscal Services Section, Accounts Receivable Unit, IEPA, P.O. Box 19276, 2200 Churchill Road, Springfield, Illinois 62794-9276. A copy of the transmittal letter and check shall be sent to the State Project Manager and the Attorney General. Payments shall be made by certified or corporate checks only.

D. BILLING PERIODS FOR STATE RESPONSE COSTS AFTER ENTRY OF INTERIM CONSENT ORDER

Billing periods for Response Costs of the Attorney General or IEPA after entry of this Interim Consent Order shall be on a quarterly or annual basis, as determined in Subsection B, above, unless the parties agree to some other billing period. Failure of the Attorney General or IEPA to timely submit an accounting of Response Costs on a quarterly or annual basis shall not bar the Attorney General or IEPA from reimbursement of said Response Costs.

E. DUE DATE

Defendants shall, within thirty (30) days of receipt of a summary accounting for Response Costs from the Attorney General or IEPA, remit checks for the amount of those costs, unless the Defendants file a Notice of Dispute to invoke Dispute Resolution relative to any such accounting, pursuant to Section XXVIII herein, or request additional documentation pursuant to Section XXXV. In the event that Defendants invoke Dispute Resolution regarding any such accounting, the Defendants shall pay the amount(s) indicated in the accounting received from the Attorney General and/or IEPA into an interest-bearing escrow account, pending a final determination of the dispute (by informal agreement, pursuant to a Final

Administrative Order, or an order of this court). If the Defendants request additional documentation, payment for the amount of the Response Costs shall be made fourteen (14) days after receipt by Defendants of such additional documentation. Undisputed amounts shall be paid when due.

F. COVENANTS OF THE STATE NOT TO SUE.

1. In consideration of reimbursement by the Defendants of all monies due for Response Costs incurred by the Attorney General prior to the entry of the Interim Consent Order and incurred by the IEPA prior to January 1, 1995, the State covenants not to sue Defendants for any Response Costs incurred by the Attorney General prior to the entry of this Interim Consent Order and incurred by the IEPA prior to January 1, 1995. In the event that any reimbursement payments to the State for such Response Costs are not paid by the Defendants in a timely manner (as provided in Subsection A, above), the State shall be released from this covenant not to sue. This covenant not to sue shall become effective upon receipt by the State of reimbursement from the Defendants for all Response Costs incurred by the Attorney General and IEPA as provided in Subsection A above.

2. In consideration of reimbursement by the Defendants of all monies due for Response Costs which may be incurred by the Attorney General after the entry of this Interim Consent Order and by the IEPA after December 31, 1994, in the amounts which shall be indicated in their respective quarterly or annual summary accounting (pursuant to Subsection B, above), the State covenants not to sue Defendants for any Response Costs which may be incurred by the Attorney General after the entry of this Interim Consent Order and

which may be incurred by the IEPA after December 31, 1994. In the event that any reimbursement payments to the State for such Response Costs are not paid by the Defendants in a timely manner (as provided in Subsection E above), the State shall be released from this covenant not to sue. This covenant not to sue shall become effective upon receipt by the State of reimbursement from the Defendants for all Response Costs incurred by the Attorney General and/or IEPA during that relevant quarterly or annual billing period as provided in paragraphs (B) and (D) above.

3. Upon written certification by the State that Defendants have satisfactorily completed all Work (as defined in Section VII) in accordance with this Interim Consent Order, the SOW, the State approved RI/FS Work Plan, any other Work Plans or any alternate Remedial Action, and further, provided Defendants have made all payments provided in paragraph (F)(1) and those payments due pursuant to paragraph (F)(2) above for Response Costs incurred prior to the issuance of said certification, the State covenants not to sue or take any administrative action against the Defendants to recover any costs incurred by the State in undertaking the performance of any such Work and for such Work that was previously certified to as having been completed satisfactorily. In the event and to the extent that any Work or other required activities under this Interim Consent Order are not satisfactorily completed by the Defendants and certified to by the State, the State shall be released from this covenant not to sue.

G. COVENANT OF DEFENDANTS NOT TO SUE

In consideration of the covenants of the State contained herein, the Defendants covenant not to sue the Attorney General, the IEPA, their employees, agents, and representatives for contribution toward any Response Costs that they allege they may have incurred prior to the entry of this Interim Consent Order, or that they will incur pursuant to this Interim Consent Order, or otherwise may incur for RI/FS, PR, and related activities, except for future acts of gross negligence as more specifically provided in Section XXXI. This covenant not to sue shall become effective, regarding all such Response Costs of the Defendants, on the date of entry of this Interim Consent Order:

H. RESPONSE COSTS OUTSTANDING AT TIME OF TERMINATION

If reimbursement payments for Response Costs of the State are outstanding at the time the State plans to terminate this Interim Consent Order, Defendants shall, within thirty (30) days of the submission of an accounting specifying such remaining costs, and before termination of this Interim Consent Order, reimburse the State for all such Response Costs. In the event that such Response Costs are not paid within the above thirty (30) day period and prior to termination of this Interim Consent Order, the State shall be released from the covenants not to sue contained in this Section.

XXXVI. INDEMNIFICATION

The State does not assume any liability by entering into this Interim Consent Order. The Defendants shall indemnify, save and hold harmless the State, its officials, agents, employees, contractors,

subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of the Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Interim Consent Order. Further, the Defendants agree to pay the State all costs it incurs including, but not limited to, attorney's fees and other expenses of litigation and settlement arising from, or on account of, claims made against the State based on acts or omissions of the Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on behalf or under their control, in carrying out activities pursuant to this Interim Consent Order. The State is not and shall not be held out as a party to any contract entered into by or on behalf of the Defendants in carrying out activities pursuant to this Interim Consent Order. Neither the Defendants nor any such contractor is or shall be considered an agent of the State.

Except as expressly provided in this Interim Consent Order, the Defendants waive all claims against the State for damages or reimbursement or for set-off of any payments made or to be made to the State, arising from or on account of any contract, agreement, or arrangement between any one or more of the Defendants and any person for performance of work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, the Defendants shall indemnify and hold harmless the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or

arrangement between any one or more of the Defendants and any person for performance of work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXXVII. INSURANCE FOR STATE

Prior to the commencement of any Work under this Interim Consent Order, the Defendants shall ensure that they or their contractor(s) and/or subcontractor(s) performing such Work obtain(s) Comprehensive or Commercial General Liability ("CGL") insurance with policy limits of no less than \$2 million per occurrence, with an annual aggregate of at least \$4 million, which shall name as additional insured, the State, including its agencies, the Attorney General, IEPA, their agents, and employees. Said CGL policies shall insure the State, including its agencies, the Attorney General, IEPA, their agents and employees against any and all liability arising in whole or in part out of Defendants', or their contractors', subcontractors', or agents' acts or omissions related to the performance of the Work at or around the Site. At least fourteen (14) days prior to commencement of any Work at or around the Site, Defendants shall provide the State with copies of current binders for or certificates of insurance policies obtained by them, their contractors, or subcontractors providing the above-required coverage. It shall be the sole responsibility of the Defendants to make sure that CGL coverage with the above-referenced limits and listing the above-referenced additional insured is maintained until such time as the work performed under this Interim Consent Order is certified by the State as satisfactory or such time as any known

claim against any of the above-referenced additional insured is finally resolved, whichever is later. The Defendants shall provide the State with copies of certificates of renewal or replacement CGL policies by the time of expiration of the initial policy or policies. Any insurance company issuing such CGL insurance shall be authorized to do business in the State of Illinois.

XXXVIII. FINANCIAL ASSURANCE

Defendants shall submit a cost estimate to the State within thirty (30) days of the entry of this Interim Consent Order for work outlined in the SOW. An RI/FS cost estimate shall thereafter be resubmitted to the State for review and approval annually to account for, inter alia, work completed, changes in the SOW and inflation. Within thirty (30) days following entry of this Interim Consent Order, and annually thereafter, one or more of the Defendants shall provide the State with evidence of financial assurance, in the form of an affidavit from the chief financial officer ("CFO") of one of the Defendants stating that the Defendant has a net worth in excess of one billion dollars. The Defendant shall also include a copy of its most current audited annual financial report in support of said affidavit. In the event that the State, upon review of the audited financial report, using generally accepted accounting principles, concludes that the Defendant(s) are financially unable to complete the Work, one or more of the Defendants, within 30 days of receiving notice from the State to do so, shall provide the State with evidence of additional financial assurance, for review and approval of the State in the amount of the current RI/FS cost estimate, and

in a form consistent with 40 C.F.R. Part 264, Subpart H, as amended. In the event that the Defendants elect to provide evidence of financial assurance by means of a financial test and corporate guarantee, and the State determines that the Defendants show questionable financial stability, based on a review of the ratio analyses referenced in 40 C.F.R. 264.143(f), the State reserves the right to require the Defendants to provide financial assurance acceptable to the State by a means specified in 40 C.F.R. 264.143(a), (b), (c), (d) or (e), as amended. In the event the Defendants elect to provide evidence of financial assurance by means of a financial test and corporate guarantee, the Defendants agree to provide the State with such additional financial information as the State may require to adequately assess the financial stability of the Defendants.

XXXIX. SUBSEQUENT AMENDMENT

A. MUTUAL AGREEMENT

In addition to the procedures set forth in Section XXVIII, this Interim Consent Order may be amended by mutual agreement of the State and the Defendants, upon approval of this court. Within thirty (30) days of reaching an agreement for an amendment under this subsection, the parties shall move this court to amend this Interim Consent Order to reflect that agreement, except in the case of informal technical amendments under Subsection C of this Section.

B. EFFECTIVE DATE

Any amendment to this Interim Consent Order shall be in writing, signed by the Attorney General, IEPA and the authorized representatives of the Defendants, and shall have as its effective date that date on which such amendment is entered by this court, except for informal technical amendments described in Subsection C below (the effective date for which shall be determined pursuant to the terms of Subsection C), and any amendments to this Interim Consent Order which are necessary to reflect a Final Administrative Order resolving a dispute pursuant to Section XXVIII (the effective date which shall be the date that Final Administrative Order is issued).

C. INFORMAL AMENDMENT

An amendment of any technical report or plan required by this Interim Consent Order (including the RI/FS Work Plan and any subordinate plans, but excluding the SOW attached to this Interim Consent Order), or an amendment of any requirement relative to said report or plan, shall be: (1) based upon informal agreement between the Defendants' Project Coordinators and the State Project Manager, in consultation with the Attorney General, (2) in writing, (3) signed by all parties, and (4) mailed simultaneously to the persons named in Section XVII. It shall be effective fourteen (14) days after it is signed by the later of the parties, unless otherwise specified by the State Project Manager. Technical modifications or additions agreed to pursuant to this Subsection, which did not result from the Dispute Resolution process provided in Section XXVIII herein, shall be incorporated into this Interim Consent

Order, but the thirty (30) day period for filing with the court provided in Subsection A of this Section and in Subsection A of Section XXVIII shall not apply.

XL. ADMINISTRATIVE RECORD FOR THE RECORD OF DECISION

The IEPA, with the cooperation of the Attorney General, shall maintain an administrative record meeting the requirements of Section 113(k)(1) of CERCLA, 42 U.S.C. 9613(k)(1), and the NCP, Subpart I, Section 300.800 et seq., upon which to base the selection of a final Remedial Action. Among other things, any informal amendments of technical reports or plans pursuant to Section XXXV and any other analysis or data submitted by the Defendants shall be part of this administrative record.

XLI. DEADLINES/RECEIPT

A. DEADLINES

Deadlines for meeting requirements under this Interim Consent Order, the SOW and the RI/FS Work Plan will be deemed to be satisfied if all requirements are met by midnight of the last day of the relevant month, if a day of the month is not stated.

B. RECEIPT

Items mailed to all parties shall be presumed received five (5) days after mailing. Actual day of receipt shall be determined by certified mail receipt card, if one is used, or by the date the item is stamped in by the State.

XLII. CONVEYANCES

A. RECORDING OF INTERIM CONSENT ORDER

Within thirty (30) days of entry of this Interim Consent Order, the Defendants shall record a copy of this Interim Consent Order with the Recorder's Office in the County in which the Site is located, with receipts thereof to be sent to the Attorney General and IEPA.

B. SALE OR TRANSFER OF INTEREST IN SITE PROPERTY

Real property owned by the Defendants within the boundaries of the Site may only be alienated in compliance with the Responsible Property Transfer Act of 1988 ("RPTA"), 765 ILCS 90/1 et seq. (1994). The parties stipulate that the Site is "Real Property" as defined in 765 ILCS 90/3(e) (1994), and is subject to the disclosure requirements of RPTA. At least ninety (90) days prior to the date of any proposed alienation or transfer, the applicable Defendant shall notify the State of such proposed alienation or transfer, the name and address of the proposed grantee, and shall provide any information the State deems necessary to assess the ability of the proposed grantee to fulfill any obligation of the applicable Defendant hereunder. The applicable Defendant shall give notice of and shall provide a copy of this Interim Consent Order to its proposed grantee no later than ninety (90) days prior to the transfer of ownership of the whole or any part of the Site. The applicable Defendant shall contemporaneously verify to the State that such notice has been given. In the event of any such alienation, all of the Defendants' obligations pursuant to this Interim Consent Order shall continue to be met by the Defendants as

grantor, and the grantee. Further, any person or entity who may be a grantee or tenant of the Site property shall specifically assume the obligations of access, cooperation, and non-interference which are placed upon the Defendants in this Interim Consent Order in a form approved by the State. Any violation of this subsection by any Defendant shall release the State from its covenants not to sue contained in Section XXXV(F) with respect to that Defendant.

C. DEED NOTICE

Any deed, title, or other instrument of conveyance entered into by one of the Defendants regarding the Site or any portion of the Site shall contain a notice that such Site is the subject of this Interim Consent Order, setting forth the nature of the case, case name, case number, and court having jurisdiction, and shall indicate that the property has been determined by the State to be Contaminated with Hazardous Substances, contaminants, and pollutants. Any deed, title, or other instrument of conveyance entered into by one of the Defendants regarding the Site shall contain a covenant approved by the State providing that no grantee or tenant shall alienate its interest except as provided herein. Any violation of this subsection by any Defendant shall release the State from its covenants not to sue contained in Section XXXV(F) with respect to that Defendant.

XLIII. RETENTION OF JURISDICTION

This court shall retain jurisdiction of this matter for the purposes of interpreting, implementing, and enforcing the terms and

conditions of this Interim Consent Order, and for the purpose of adjudicating all matters of dispute between the parties.

XLIV. SEVERABILITY

A. SEVERABILITY

The provisions of this Interim Consent Order shall be severable, and, should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law or the NCP, the remaining clauses shall remain in full force and effect.

B. CONTROLLING PROVISIONS

In the event that any provision of this Interim Consent Order, its attachments, or any State-approved plans or reports are found by this court to be inconsistent with the provisions of the Act, CERCLA, the ICP, or the NCP, those provisions of the Interim Consent Order, its attachments or plans shall be construed so as to be consistent with the Act, CERCLA, the ICP, and the NCP.

XLV. CERTIFICATION AND TERMINATION

A. SUBMISSION OF NOTICE OF COMPLETION BY DEFENDANTS

Upon completion of the Work and all other obligations required of the Defendants pursuant to this Interim Consent Order, Defendants shall submit a written notice to IEPA and the Attorney General which states that the Work and all other obligations have been completed in full satisfaction of the requirements of this Interim Consent Order.

B. REVIEW OF WORK AND OTHER OBLIGATIONS OF DEFENDANTS

The State agrees to review the Work and the performance of other obligations hereunder within ninety (90) days of receipt of notice from the Defendants that they believe that all such Work and obligations have been Satisfactorily completed. The State will indicate whether or not Satisfactory completion of all Work and other obligations has been achieved following such review. If the State needs additional time for said review, it agrees to so notify the Defendants before the expiration of the ninety (90) day period and a sixty (60) day extension will be provided. Under no circumstances, however, shall the failure of the State to indicate to Defendants whether or not Satisfactory completion has been achieved, or to notify the Defendants that extra time for review will be necessary within ninety (90) days of receipt of notice be construed as an approval or acceptance by the State of Defendants' Work or its performance of any other obligation hereunder. If the State determines that the Work and/or the performance of any obligation has not been completed in accordance with the requirements of this Interim Consent Order, the State will notify Defendants in writing of what the Defendants shall be required to do to satisfactorily complete the Work or the performance of any other obligation, referencing the specific provisions of this Interim Consent Order, the SOW, or other State-approved plan, and stipulating a schedule for completion. If Defendants disagree with any such determination by the State, the Dispute Resolution provision of Section XXVIII shall apply.

C. DEEMED SATISFACTION

With the exception of Sections XXX, XXXI, XXXII, XXXV, XXXVI, and XXXVII, the provisions of this Interim Consent Order shall be deemed satisfied upon receipt by the Defendants from the State of a written certification of Satisfactory completion of all Work and other obligations required hereunder. Said certification will indicate that the Defendants have completed all of the Work and other activities required of them hereunder, including any additional Work, modifications or amendments hereto, to the satisfaction of the State. It shall be the sole responsibility of the Defendants to demonstrate to the State's satisfaction that all Work and other activities hereunder have been completed. Upon certification of Satisfactory completion by the State, or upon agreement of all parties, this Interim Consent Order shall terminate, with the exception of Sections XXX, XXXI, XXXII, XXXV, XXXVI and XXXVII stated above in this paragraph.

D. SATISFACTION OF 4(q) NOTICE

Receipt of the State's written certification of Satisfactory completion of all Work and other obligations constitutes satisfaction of the 4(q) notice sent to Defendants by the IEPA.

The parties whose signatures appear below hereby consent to the terms and entry of this Interim Consent Order.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. JAMES E. RYAN,
Attorney General of the State of
Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement Division

DATED: _____

BY: _____
WILLIAM D. SEITH
Chief, Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

DATED: _____

BY: _____
JOSEPH E. SVOBODA
General Counsel

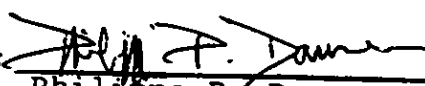
MOBIL OIL CORPORATION

DATED: _____

BY: _____

VIACOM INTERNATIONAL INC.

DATED: _____

BY:  _____
Philippe P. Dauman, General Counsel

HORSEHEAD INDUSTRIES, INC.

DATED: _____

BY: _____

ENTERED THIS 6th DAY OF November, 1995.

 _____
JUDGE

c:\khco12h .

The parties whose signatures appear below hereby consent to the terms and entry of this Interim Consent Order.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. JAMES E. RYAN,
Attorney General of the State of
Illinois

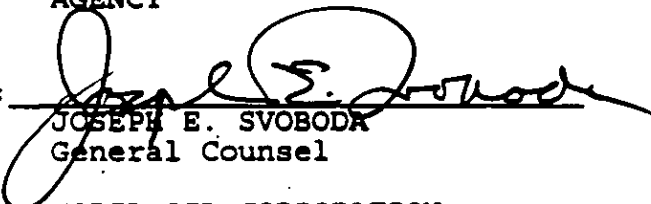
MATTHEW J. DUNN, Chief
Environmental Enforcement Division

DATED: 9/21/95

BY: 
WILLIAM D. SEITH
Chief, Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

DATED: 9/14/95

BY: 
JOSEPH E. SVOBODA
General Counsel
MOBIL OIL CORPORATION

DATED: _____

BY: _____

VIACOM INTERNATIONAL INC.

DATED: _____

BY: _____

HORSEHEAD INDUSTRIES, INC.

DATED: _____

BY: _____

ENTERED THIS _____ DAY OF _____, 1995.

JUDGE

c:\khcol2h

The parties whose signatures appear below hereby consent to the terms and entry of this Interim Consent Order.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. JAMES E. RYAN,
Attorney General of the State of
Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement Division

DATED: _____

BY: _____
WILLIAM D. SEITH
Chief, Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

DATED: _____

BY: _____
JOSEPH E. SVOBODA
General Counsel

MOBIL OIL CORPORATION

DATED: _____

BY: _____

VIACOM INTERNATIONAL INC.

DATED: _____

BY: _____

HORSEHEAD INDUSTRIES, INC.

DATED: 9-15-95

BY: Thomas E. Quack

ENTERED THIS _____ DAY OF _____, 1995.

JUDGE

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The parties whose signatures appear below hereby consent to the terms and entry of this Interim Consent Order.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. JAMES E. RYAN,
Attorney General of the State of
Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement Division

DATED: _____

BY: _____
WILLIAM D. SEITH
Chief, Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

DATED: _____

BY: _____
JOSEPH E. SVOBODA
General Counsel

MOBIL OIL CORPORATION

DATED: 9/15/95

BY: J. G. Zaboya

VIACOM INTERNATIONAL INC.

DATED: _____

BY: _____

HORSEHEAD INDUSTRIES, INC.

DATED: _____

BY: _____

ENTERED THIS _____ DAY OF _____, 1995.

JUDGE

c:\khc012h

The parties whose signatures appear below hereby consent to the terms and entry of this Interim Consent Order.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. JAMES E. RYAN,
Attorney General of the State of
Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement Division

DATED: _____

BY: _____
WILLIAM D. SEITH
Chief, Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

DATED: _____

BY: _____
JOSEPH E. SVOBODA
General Counsel

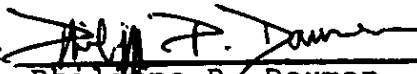
MOBIL OIL CORPORATION

DATED: _____

BY: _____

VIACOM INTERNATIONAL INC.

DATED: _____

BY:  _____
Philippe P. Dauman, General Counsel

HORSEHEAD INDUSTRIES, INC.

DATED: _____

BY: _____

ENTERED THIS _____ DAY OF _____, 1995.

JUDGE

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Attachment 1

**STATEMENT OF WORK
FOR INTERIM MEASURES AND OTHER RESPONSE ACTIONS AT
THE DEPUE SITE**

1. Fence / Repair Fence Surrounding Site

The Defendants have secured and shall continue to secure all areas of the former plant site with a six-foot high chain link fence that restricts passive entry. Defendants have and shall continue to secure all entry gates either by locks or guards at all times.

The Defendants have secured and shall continue to secure the entrance to the municipal dump area with a six-foot high chain link fence that restricts passive vehicle entry. The Defendants shall consult with IEPA regarding additional requirements in the municipal dump area, if any.

2. Initiate dust control for all areas of exposed site soils and institute a site perimeter air monitoring program

The Defendants have implemented a Dust Suppression Plan that was prepared by the Defendants and subsequently approved by IEPA on August 18, 1994. Defendants shall continue to apply dust suppression measures to areas of the Site that are not currently supporting active vegetative growth until such time that the measures are terminated pursuant to the terms of the Dust Suppression Plan.

The Defendants may, by sampling and analysis, show that certain areas do not require dust suppression measures; however dust suppression measures will be continued until such time as IEPA concurrence upon interpretation of any data or conclusions set forth is acquired.

The Defendants have implemented a Perimeter Air Monitoring Plan that was prepared by Defendants and conditionally approved by IEPA on August 17 and 19, 1994. Defendants shall continue to perform perimeter air monitoring until such time that the monitoring is terminated or modified pursuant to the terms of the Perimeter Air Monitoring Plan.

This air monitoring program includes continuous meteorological monitoring and recording, two sampling events per week, on the same days of each week (eg. Monday

and Thursday), using high volume sampling devices operated for 24 hour periods and designed to collect Total Suspended Particulate data. General Metal Works PM-10 samplers are being used for Total Suspended Particulate sampling. The samplers are located at, or just beyond the former plant site perimeter with a sampler located at or near each 60 degree radial from the weighted geographic center of the former plant site. Samples will be analyzed consistent with the requirements of the Air Monitoring Plan.

3. **Develop a plan to grade and drain the Site such that all discharge from the Site of surface water contaminated as a result of Hazardous Substances at the Site is prohibited**

Develop, and present for Agency review and acceptance, a report documenting surface water flow patterns at the former plant site. The report shall address current surface-water run on and run off relationships. If necessary and consistent with the overall RI and other response actions anticipated for the Site, develop and present for Agency acceptance a plan to redirect all, or certain, off-Site surface water away from the Site, or otherwise protect surface water that is not contaminated as a result of Hazardous Substances at the Site. The plan must take steps to preclude the release of surface water contaminated with Hazardous Substances originating from the Site from entering waters of the State. The plan must comply with all applicable provisions of the Act and particularly those sections relative to storm water control. Action taken shall be consistent with a schedule acceptable to the Agency and the Defendants.

4. **Take appropriate action at the Site to reduce/preclude discharges of contaminated groundwater to surface waters of the State**

Present for Agency acceptance a plan which will reduce/preclude the discharge of contaminated groundwater at the Site to waters of the state. This plan shall address immediate actions, a focused Remedial Investigation of groundwater and present in conceptual detail longer term, more inclusive actions. Within 30 days following entry of the Interim Consent Order, the Defendants will produce that portion of the plan relative to immediate actions to be taken. These immediate actions will address the water containing metals above regulatory limits which discharge to the ditch which empties into DePue Lake. All current discharges to the ditch containing metals above regulatory limits will either be collected and treated pursuant to Section XXVII or will otherwise be stopped. Mobilization of a contractor and equipment to initiate collection and treatment shall begin within 30 days following Agency approval of required documents.

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This plan for immediate water collection and treatment will include an acceptable schedule showing milestone dates relative to initiation, completion, deliverables and field activities of the focused Remedial Investigation.

5. **Conduct a focused Remedial Investigation, Baseline Risk Assessment, and The Feasibility Study of the ditch and the surrounding area which receives surface water flow from the former plant site.**

The discharge ditch to DePue Lake, currently receiving flow from the Site, including the New Jersey Zinc Co. discharge, must be the subject of an accelerated RI, BRA (including an Ecological Risk Assessment) and FS consistent with the SOW Attachment 2, Sections I, II and III. Particular attention will be given to the unnatural sediments in the ditch. Within 18 months of the entry of the ICO, subject to time adjustments appearing in the SOW, Attachment 2, Section I(B), the accelerated RI/FS will be completed. Draft Remedial Design documents will be presented within 120 days of signing the ROD. Procurement of a contractor(s) to implement the Remedial Action will commence within 30 days of approval by the Agency of the final Remedial Design. Remedial Action will proceed consistent with a schedule to be presented as a portion of the Remedial Design documents.

6. **Conduct a RI/FS or RI/DS for the Primary Zinc Slag Pile consistent with the appropriate Applicable, or Relevant and Appropriate, Requirements (ARARs)**

Develop and present for Agency acceptance a focused RI Plan for the Primary Zinc Slag Pile. The plan shall be consistent with the Act and all applicable IEPA and USEPA guidance, and must include a schedule for the work acceptable to the Agency and the Defendants. During or upon completion of the focused RI, the Defendants may prepare and submit an Identification of Conceptual Presumptive Remedy(s) Document (ICPR), or proceed with a Feasibility Study for closure of the Primary Zinc Slag Pile. The Presumptive Remedy for the Primary Zinc Slag Pile is in-place closure. If an ICPR is submitted, IEPA shall provide the Agency's written comments on the ICPR, and shall indicate their concurrence and/or technical conditions for proceeding with a Design Study (DS) to further define the Presumptive Remedy. Any focused RI sampling, pre-closure design sampling and long term monitoring of, or near, the Primary Zinc Slag Pile shall complement the overall Remedial Investigation (RI) for the Site. The focused RI and the FS, and/or the DS if a Presumptive Remedy is selected, shall be consistent with the attached Statement of Work For Conducting a Remedial Investigation/Feasibility Study or Remedial Investigation/Design Study for the Site.

7. Conduct an RI/FS or RI/DS for the Lithopone Ridges consistent with the appropriate ARARs

Develop and present for Agency acceptance a focused RI Plan for the Lithopone Ridges. The plan shall be consistent with the Act and all applicable IEPA and USEPA guidance, and must include a schedule for the work acceptable to the Agency and the Defendants. During or upon completion of the focused RI, the Defendants may submit an Identification of Conceptual Presumptive Remedy(s) Document (ICPR), or proceed with a Feasibility Study for closure of the Lithopone Ridges. The Presumptive Remedy for the Lithopone Ridges is in-place closure. If an ICPR is submitted, IEPA shall provide the Agency's written comments on the ICPR, and shall indicate their concurrence and/or technical conditions for proceeding with a Design Study (DS) to further define the Presumptive Remedy. Any focused RI sampling, pre-closure design sampling and long-term monitoring of, or near, the Lithopone Ridges shall complement the overall RI for the Site. The focused RI and the FS, and/or the DS if a Presumptive Remedy is selected, shall be consistent with the attached Statement of Work For Conducting a Remedial Investigation/Feasibility Study or Remedial Investigation/Design Study for the Site.

8. Closure/Removal of Vanadium Pentoxide Catalyst Disposal Area consistent with appropriate ARARs

The Defendants have initiated closure/removal of the Vanadium Pentoxide Catalyst Disposal Area and shall prepare for Agency acceptance an Interim Closure Report consistent with the Act, and appropriate ARARs, for this portion of the Site. The Interim Closure Report shall describe, in detail, all actions taken thus far and propose future actions to insure the adequacy of the closure/removal action. The Interim Closure report shall be submitted for Agency comment and approval prior to any further actions in the Vanadium Pentoxide Disposal Area. Any sampling and long term monitoring of, or near, the Vanadium Pentoxide Catalyst Disposal Area shall complement the overall RI of the Site.

9. Proceed with Closure of the Phosphogypsum Stack consistent with the requirements of Title 35, Part 807, IAC

The Defendants shall proceed with ongoing closure activities for the phosphogypsum stack consistent with Title 35, Part 807, IAC. The closure is proposed to consist of regrading the phosphogypsum stack to control surface water flow and establishment of sustainable vegetative cover. A detailed plan describing the proposed closure and its

effectiveness, including a schedule will be submitted for Agency acceptance.

10. Defendants to provide draft ARARs for all work

At all locations where identification of ARARs are indicated or required by stipulation, rule, or regulation, the Defendants shall present a draft of proposed ARARs. These proposed ARARs will be subject to Agency review and approval.

11. Initiate a RI/FS and/or RI/DS consistent with the attached Statement of Work for Conducting a Remedial Investigation/Feasibility Study or Remedial Investigation/Design Study for the Site

Initiate an RI/FS and/or RI/DS consistent with the attached Statement of Work for Conducting a Remedial Investigation/Feasibility Study or Remedial Investigation/Design Study for the Site. Various deliverables described in the attached RI/FS / RI/DS Statement of Work shall be provided in the specified time frames contained in the Interim Consent Order.

12. Notice IEPA and USEPA of Site Work, Status, Monthly Reports and Schedules

Upon receipt of the 4(q) notice, the Defendants immediately established and identified lines of communication with the State Project Manager. The Defendants will notify the State Project Manager five (5) days in advance of any Site activity and any changes to the schedule of activities, and the State Project Manager will notify the Defendant's Project Coordinator(s) five (5) days in advance of any changes to scheduling of the State's Site-related activities.

The Defendants shall provide Monthly Progress Reports and schedule updates defining upcoming activity to the IEPA, USEPA and IAG. A draft monthly report and schedule, detailing format and content, was submitted to and accepted by the IEPA, and submission of Monthly Progress Reports was initiated in June 1994. The schedule shall indicate the expected date of receipt for all deliverables required in the Interim Consent Order. Each Monthly Progress Report shall be submitted to the State Project Manager on the 15th of the month following the reporting period.

13. Scoping Document for Presumptive Remedial Actions

Upon completion of an RI/DS, the Defendants shall produce one or more Draft

Scoping Document(s) for Presumptive Remedial Actions. The Draft Scoping Document(s) will address each Presumptive Remedial Action proposed to be taken by the Defendants to comply with the Interim Consent Order. The Draft Scoping Document(s) shall, at a minimum, include a map of the facility identifying each unit which will be the subject of a Presumptive Remedial Action, narrative description of each Presumptive Remedial Action, conceptual drawings (both in plan and section where appropriate) for each Presumptive Remedial Action, the appropriate ARARs for each Presumptive Remedial Action, and discussion of how the Presumptive Remedial Action will not be inconsistent with other response actions anticipated for the Facility.

The Defendants will incorporate the Agency's comments on the Draft Scoping Document(s) for Presumptive Remedial Actions within 30 days of receipt and provide Draft Final documents. The Draft Final Scoping Document(s) for Presumptive Remedial Actions shall not be considered Draft Final until the described Presumptive Remedy(s) is supported by the Agency and the Defendants as not inconsistent with all other response actions anticipated for the Site. The Draft Final Scoping Document(s) for Presumptive Remedial Actions will be formally presented by IEPA to the public for comment as part of the overall Community Relations Program for the Site. Comments received by IEPA on the Draft Final Scoping Document(s) for Presumptive Remedial Actions will be addressed in a Responsiveness Summary. The Scoping Document(s) for Presumptive Remedial Actions and the Responsiveness Summary will be incorporated into one or more Record(s) of Decision [ROD] for Presumptive Remedial Actions by IEPA. The ROD(s) for Presumptive Remedial Actions may be executed by the Director of IEPA upon receipt of USEPA Region V's position, and will represent the administrative decision document supporting the described actions at the Site by the Defendants. Following execution by the Director of the IEPA the Defendants shall develop Remedial Design(s) for Presumptive Remedial Actions presented in the approved ROD(s).

14. Cooperate with IEPA / USEPA in conducting Community Relations activity

The Defendants will, through Item 12 above, keep the IEPA aware of site activities. The State Project Manager, in consultation with IEPA Community Relations staff, will identify community concerns and information the community needs to better understand the site and site related remedial and removal activities. The Defendants will through access to generated data, scheduling of work, and participation in public meetings cooperate with IEPA in a Community Relations program for the site. IEPA will prepare, and maintain, a Public Repository of site information. The Defendants will participate in this by reviewing and commenting on information to be included in the repository.

Attachment 2

**STATEMENT OF WORK
FOR CONDUCTING A REMEDIAL INVESTIGATION/FEASIBILITY STUDY
AND REMEDIAL INVESTIGATION/DESIGN STUDY(S)
AT THE DEPUE SITE**

The Remedial Investigation (RI), Feasibility Study (FS), and/or Design Study (DS) Work Plans shall be developed in conformance with this Statement of Work (SOW), the standards set forth in Section 121 of CERCLA, USEPA guidance on remedial investigations and feasibility studies, CERCLA, SARA, the NCP, Superfund guidance and policy, any applicable State law and any additional guidance documents timely provided by USEPA and IEPA. All work to be performed by the Defendants pursuant to the attached Interim Consent Order shall be under the direction and supervision of a qualified professional engineer, certified geologist, or other person qualified to work in hazardous materials project management. Prior to the initiation of work at the Site, the Defendants shall notify IEPA and the Illinois Attorney General's Office (AGO), in writing, of the name, title, and qualifications of the proposed engineer or geologist, and of the names of principal contractors and/or subcontractors proposed to be used in carrying out the work to be performed pursuant to the Interim Consent Order. The Defendants reserve the right to replace the engineer, geologist, contractor and/or subcontractor for reasons which shall be disclosed to IEPA in writing within five (5) business days, except that any such replacement shall be subject to the notice requirements of this paragraph and shall not be cause for delay of performance of work required by the Interim Consent Order.

This document is the Statement of Work (SOW) for Conducting a Remedial Investigation and Feasibility Study and/or Design Study at the DePue Site located in Bureau County, Illinois (see Attachment 3 of the Interim Consent Order). The purpose of this SOW is to provide the direction and intent of the RI/FS and/or RI/DS. Within 30 days of the entry of the Interim Consent Order a Site Assessment Plan (SAP), as described in this SOW, shall be submitted to IEPA. IEPA, in consultation with USEPA and AGO, shall review the Site Assessment Plan and provide comments to the Defendants. The State Project Manager shall act as the central point for all agency comments. All IEPA, USEPA, and AGO comments shall be consolidated, and all conflicts in the comments resolved, by the State Project Manager, prior to submitting any comments to the Defendants. "State Project Manager" refers to the IEPA employee designated by the State to provide all technical comments, coordinate, monitor, and direct the work at and related to the Site.

Within 90 days of receipt of IEPA's approval of the Site Assessment Plan, a Draft RI/FS Work Plan that provides detailed guidance for the execution of the RI/FS shall be submitted to IEPA, USEPA, and AGO. If deemed necessary by the Defendants, the Defendants may

submit a request for extension of the submittal date for the RI/FS Workplan, including an explanation of the reason(s) for the request, and approval of the extension request shall not be unreasonably withheld by the IEPA. All documents described in the RI/FS Work Plan shall be separate and complete documents not to be included as appendices within any document.

PURPOSE

The purpose of the Remedial Investigation (RI) is to determine the nature and extent of Hazardous Substances at the Site. The FS and/or DS, based upon the RI report, shall determine and evaluate alternatives for remedial action that are protective of human health and the environment and that are consistent with the NCP. The Defendants shall furnish or contract all personnel, materials, and services needed to perform the RI/FS and/or RI/DS at the Site. Data collected pursuant to the requirements of the RI/FS Work Plan shall be submitted in a tabulated summary with the detection limits included. Actual data shall be submitted in technical memoranda, or technical reports.

Monthly written progress reports shall be submitted to the IEPA, the AGO and USEPA on the 15th day of each month following the commencement of the activities required in the RI/FS Work Plan.

Regarding documents, the IEPA requests that a total number of 6 (six) copies be submitted to the IEPA plus one (1) copy sent to USEPA and one (1) to AGO. Additional copies will be provided upon request.

The Defendants shall consult with the State Project Manager at least five (5) days before initiating any sampling and analysis activities required by the RI/FS Work Plan, and the State Project Manager shall consult with the Defendants' Project Managers at least five (5) days before the State or the USEPA initiates any investigative activities related to the Site.

Regarding the Administrative Record of Decision (ROD), IEPA, with the cooperation of the Attorney General, shall maintain an Administrative Record meeting the requirements of Section 113 (k) (1) of CERCLA, 42 U.S.C. 9613 (k) (1), and the NCP Subpart I, Section 300.800 et seq., upon which to base the selection of a final Remedial Action. (Such selection of Remedial Action is dictated by the NCP). Among other things for example, Site photos dating back to when the Site was first purchased by the Defendants, Agency documents including but not limited to RCRA, Bureau of Water, etc., any and all files IEPA wants to include, any informal amendments of technical reports or plans required by the Interim Consent Order and any other analysis, data, or comments submitted by the Defendants, shall be part of the Administrative Record.

The Tasks described herein are grouped into the following four categories:

- I. Planning Documents and RI/FS Work Plan
- II. Remedial Investigation (RI)
- III. Feasibility Study (FS)
- IV. Design Study (DS)

I. PLANNING DOCUMENTS AND RI/FS WORK PLAN

Task 0 - RI/FS Work Plan Preparation

A. SITE ASSESSMENT PLAN (SAP) / EVALUATION OF PRE-EXISTING SITE INFORMATION AND REPORTS

Use of existing data, studies, analyses and other work shall be optimized in scoping the RI/FS Work Plan to the extent consistent with the NCP. Data gaps evident from a review of this existing data will be considered in the RI/FS Work Plan. RI tasks shall be developed to gather the information necessary to support the Baseline Risk Assessment Plan (BRAP) and the FS and/or DS.

The SAP shall represent the initial submittal to IEPA, USEPA, and AGO. This document, as well as all QA/QC documents used to generate existing data, shall be submitted to IEPA, USEPA, and AGO within 30 days of the entry of the Interim Consent Order. Further detail as to the content of the SAP can be found in the section of this document entitled Remedial Investigation - RI Scope - Task 1, below. IEPA, USEPA, and AGO shall review the SAP and the associated QA/QC submittals for their quality, content, and consistency with the NCP. IEPA shall then provide the Agencies' comments to the Defendants informing them if the aforementioned submittals are of acceptable quality to be incorporated into the RI.

B. WORK PLAN

After receipt of the State's comments pertaining to the SAP, the Defendants shall prepare a Work Plan for the RI/FS including the elements contained in this SOW. The RI/FS Work Plan shall also include a detailed discussion of the technical approach, personnel requirements, schedules and the following:

1. Field Sampling Plan
2. Quality Assurance Project Plan

3. Health and Safety Plan
4. Data Management Plan
5. Baseline Risk Assessment Plan *
6. Community Relations Plan **

* Defendants will make application to USEPA Region V for authorization to perform task 5, within 20 days of approval of the SAP. The IEPA will respond within 20 days of receipt of the application. If the IEPA does not respond within 20 days, the submittal date for the RI/FS Workplan will be automatically extended one day for each day beyond the 20 day time frame until the IEPA's response is received. If authorization is not granted, IEPA or it's contractors shall perform task 5.

** IEPA or it's contractors shall perform task 6

The preparation of these plans shall result in draft documents. The draft plans shall be submitted to the IEPA, USEPA, and AGO within 90 days of receipt of the Agencies' approval of the SAP. The Defendants shall incorporate all Agency comments and issue a final version of the RI/FS Work Plan within 45 days of receipt of comments. If deemed necessary by the Defendants, the Defendants may submit a request for extension of the submittal date for the final version of the RI/FS Workplan, including an explanation of the reason(s) for the request, and approval of the extension request shall not be unreasonably withheld by the IEPA.

1. Field Sampling Plan

A Field Sampling Plan shall be prepared to address field activities necessary to obtain additional Site data. The Field Sampling Plan shall contain:

- a. An evaluation of additional data required to adequately characterize the Site.
- b. A statement of sampling objectives; specification of equipment and equipment procedures, analyses of interest, sample types, sample locations and frequency, sample handling; and
- c. A sampling and analysis schedule with target dates that are mutually agreed to by the Defendants and the IEPA.

The Field Sampling Plan shall include a discussion of any proposed field screening techniques to screen out samples that do not require laboratory analysis off Site.

The Field Sampling Plan shall address potential remedial technologies and associated data that may be needed to evaluate alternatives for the FS and/or DS.

2. Quality Assurance Project Plan

A Quality Assurance Project Plan (QAPP) for the sampling, analysis and data handling aspects of the RI/FS shall be prepared and submitted for Agency review/approval. The QAPP shall be consistent with the requirements of current USEPA and State guidance regarding the preparation of QAPPs.

The QAPP shall address the types of investigations to be conducted at the Site and at areas impacted by the Site (e.g., waste characterization, hydrogeologic, soils and sediments, air, and surface water). The QAPP shall identify proposed laboratories for analysis. Only labs with a capability to perform the required work will be accepted.

Quality assurance/quality control (QA/QC) criteria shall be specified and shall be supported with appropriate discussion identifying the applications and limitations of such criteria. All sampling and analysis necessary to support the Baseline Risk Assessment shall meet USEPA Data Quality Objective (DQO) level 4 or higher. All data generated during any Site activity, conducted under the requirements of this QAPP, shall be validated consistent with the QAPP prior to delivery in final form to the Agencies.

3. Health and Safety Plan

A Health and Safety Plan shall be prepared to address hazards that the investigation and design activities may present to the investigation team and to the surrounding community. The Health and Safety Plan shall address all applicable regulatory requirements and detail personnel responsibilities, protective equipment, procedures and protocols, decontamination, training and medical surveillance. The Health and Safety Plan shall identify problems or hazards that may be encountered and their solutions. Procedures for protecting third parties, such as visitors or the surrounding community, shall also be provided. The Health and Safety Plan shall be consistent with, but not limited to:

- Section 111(c) (6) of CERCLA
- USEPA Order 1440.2 -- Health and Safety Requirements for Employees Engaged in Field Activities

- USEPA Order 1440.3 -- Respiratory Protection
- USEPA Occupational Health and Safety Manual
- USEPA Interim Standard Operating Safety Procedures
- 29 CFR Part 1910.120 OSHA Standards: Hazardous Waste Operations and Emergency Response
- Site Conditions

4. Data Management Plan

A Data Management Plan shall be developed to document and track investigation data and results. The Data Management Plan shall identify and set up laboratory and data documentation materials and procedures, project file requirements, and project-related progress reports. Data management shall be consistent with current USEPA RI/FS guidance:

5. Baseline Risk Assessment Plan

A Baseline Risk Assessment Plan (BRAP) and associated work plan shall be performed by IEPA, IEPA's contractors, or the Defendants as provided for in the ICO based on data provided by the Defendants. In conducting the RI the Defendants will identify and characterize the toxicity and levels of hazardous substances present, contaminant fate and transport, the potential for human and or environmental exposure, and the risk of potential impacts or threats on human health and the environment. The BRAP shall provide the basis for determining whether or not remedial action is necessary, and a justification for performing remedial actions. The procedures and information to be followed when performing the BRAP for this Site and areas impacted by the Site are contained in:

- The NCP
- USEPA's RI/FS Guidance: "Interim Final Risk Assessment Guidance (RAG) for Superfund, Volume I, Human Health Evaluation Manual: (Part A) (EPA/540/1-89/002) (December 1989)
- "Interim Final Risk Assessment Guidance for Superfund, Volume II, Environmental Evaluation Manual" (EPA/540/1-89/001) (March 1989)

- USEPA's Integrated Risk Information System (IRIS), as well as updates to these documents, data bases, or additional RAG volumes that are provided by the State after the effective date of the Interim Consent Order
- ATSDR Health Assessment, if finalized and available

If conducted by the Agency, or it's contractors, the Defendants will be given 30 days to comment on the draft BRAP; likewise, if conducted by the Defendants the Agency will be given 30 days to comment (on) and/or approve the BRAP.

The BRAP shall consist of the following subtasks based upon the available information; however, based upon new and forthcoming information, there may be additional subtasks in the future.

Subtask 5.1 - Plant historical information.

Subtask 5.2 - Source Characterization

Subtask 5.3 - Physical Characterization

Subtask 5.4 - Migration Pathway Assessment

Subtask 5.5 - QA/QC Data

6. Community Relations Plan

- a. IEPA shall prepare a Community Relations Plan (CRP). Specific components of the CRP are listed in the Interim Consent Order. The CRP shall describe the types of information to be provided to the public and outline the opportunities for community comment and input during the RI/FS and/or RI/DS process. Specific roles shall be described consistent with those mandated by the NCP.

II. REMEDIAL INVESTIGATION (RI)

The objectives of the RI are to:

- Identify potential source(s) of Hazardous Substances at the Site and determine the nature and extent of Hazardous Substances, if any, at the Site.
- Define the pathways of Hazardous Substance migration and evaluate the potential for impacts off Site.
- Define the physical features that could impact Hazardous Substance migration, containment or remediation.
- Characterize actual and potential risk, if any, to public health and the environment.
- Gather information necessary to support the FS and/or DS.

RI Scope:

The RI consists of the following tasks:

Task 1 - Description of Site Conditions and Monitoring Well, Sampling Point, Gauging Station Inspection

Data gathered during the previous investigations or inspections, and other relevant data may be used, provided that the data meets the requirements for use in the RI Report (this is in reference to the documents, which include the SAP, to be initially submitted to the IEPA, USEPA, and AGO as well as documents generated earlier). The SAP includes the following areas:

- Site Background
- History of Response Actions
- Nature and Extent of Problem
- Definition of Boundary Conditions
- Site Map

- Monitoring Well, Sampling Point, Gauging Station Description and Inspection
- Implications for the RI/FS and/or RI/DS Scope

Task 2 - Site Investigation

Investigations shall be conducted to characterize the Site and its actual or potential hazard to public health and the environment. The investigations shall result in data of adequate technical content to support the BRAP and development and evaluation of remedial alternatives during the FS or PR selection process. Investigation activities shall focus on problem definition and data to support the screening of remedial technologies, alternatives development and screening, and detailed evaluation of alternatives. The goals of the Site Investigation are to:

- Investigate and fully characterize potential sources of Hazardous Substances and their chemical nature at the Site;
- Evaluate the vertical and horizontal extent of Hazardous Substances originating from the Site;
- Spatially quantify Hazardous Substances to the extent necessary to enable preparation of a BRAP and the FS and/or DS;
- Identify Hazardous Substance migration pathways and movement; and,
- Characterize public health and environmental risk associated with Site-related Hazardous Substances.

The Site Investigation activities shall follow the Work Plan. Sample analyses shall be conducted at laboratories following IEPA and USEPA protocols or equivalents. Strict chain-of-custody procedure shall be followed and the location of samples collected for analysis shall be designated on the Site map established under Task 1.

Samples collected from areas not investigated during previous studies which are accepted in the SAP, shall be analyzed for the Contract Laboratory Program (CLP) target contaminant list plus any chemical which is suspected to be present but is not in the CLP target contaminant list. The Agency will entertain request(s) for a reduced list of analytical parameters for initial or continuing sampling regimes. The request will be based on data approved in the SAP or equivalent data which indicate that certain parameters have not been detected above appropriate regulatory limits. Any reduced

analytical requirements will be instituted only following Agency approval of a request made by the Defendants.

Although the following investigations essentially provide for the activities which are intended to satisfy the above goals, the Work Plan developed pursuant to this Statement of Work may propose alternative methods to achieve the goals of the Site Investigation and provide the data required in BRAP Subtask 5.4 (Migration Pathway Assessment).

a. Source Characterization

Investigations shall be performed for the purpose of characterizing the physical and chemical aspects of potential source areas of Hazardous Substances, the materials in which they are contained, and the surrounding materials. The source investigation shall involve data related to the type, quantity, chemical and physical properties, and concentrations from areas potentially contaminated with Hazardous Substances from the Site. It is expected that this information shall be obtained from a combination of existing Site information, field inspections, preliminary screening techniques, and Site sampling techniques.

b. Migration Pathway Assessment

Migration pathways at the Site shall be characterized through the following investigations:

1. Hydrogeologic Investigation

A hydrogeologic study shall be performed to evaluate the subsurface geology and characteristics of the uppermost water bearing formations. Information utilized in this study may draw on existing Site data. The study shall define the following but is not limited to: hydrostratigraphy, controlling geologic features, potential for preferential groundwater flow, and hydraulic heads within the uppermost water bearing formations of the Site and areas impacted by the Site. The study shall also evaluate the long term disposition of potential Hazardous Substances if they migrate to the groundwater.

The survey shall address at a minimum the degree of hazard, the mobility of pollutants, the soils' attenuation capacity and mechanisms, discharge/recharge areas, regional flow directions, and quality and effects of any pumping alternatives that are developed, if applicable. This study may address existing Site data as described in the SAP and information obtained from the Source Characterization to define groundwater flow patterns. In addition, the results of

this investigation shall assist in forming the rationale for locating and designing monitoring wells and the subsequent characterization of Hazardous Substances.

A technical description of all methods to be used in gathering data for this study shall be included. This shall include a diagrammatic representation of proposed monitoring well locations, design and construction, information on materials, drilling techniques and well development methods.

2. Municipal and Residential Well Samples

A survey shall be conducted to identify those residences and establishments within a one mile radius of the Site which (1) utilize wells completed in the aquifer(s) of concern, and (2) are not serviced by municipal water supplies, if any. From this information, a sampling and analysis program shall be developed to obtain water quality data from representative wells that could be impacted by Site-related Hazardous Substances. The data may also be used to evaluate groundwater quality and other sources within the Site.

3. Soils Investigation

The physical and chemical characteristics of surface and subsurface soils at the Site shall be evaluated to determine the location and extent of Hazardous Substances, if any. This investigation may overlap with certain aspects of the Source Characterization and Hydrogeologic Investigation (e.g. characteristics of soil strata are relevant to both the transport of Hazardous Substances by groundwater and to the location of adverse environmental impacts from Hazardous Substances, if any, in the soil; cores from groundwater monitoring wells may serve as soil samples).

To further characterize the horizontal and vertical extent of Hazardous Substances in soils at the Site, information on local background levels, location of samples, techniques utilized, and methods of analysis shall be included. The investigation shall identify the locations and probable quantities of subsurface wastes through the use of appropriate field investigation techniques and subsequent sample collection.

4. Surface Water and Sediment Investigation

Surface water drainage patterns and runoff characteristics shall be evaluated for the potential of erosional transport. The physical and chemical characteristics of surface waters and sediments shall be evaluated. Staff gauges will be used in conjunction with groundwater piezometric measurement to evaluate the hydraulic relationship between Depue Lake, the Illinois River and the groundwater flow system.

A survey of data on surface water flow quantity and quality and the relationship between the Site and local background levels, locations and frequency of previous sampling events, sampling procedures, and methods and types of analyses shall be particularly useful.

c. Hazardous Substance Characterization

Data generated from the Migration Pathway Assessment and Source Characterization may be used in conjunction with data from the SAP to design an environmental sampling and analysis program. The objective of this program is to evaluate the extent and magnitude of Hazardous Substance migration along all potential pathways of concern at the Site.

Monitoring points shall be installed in each appropriate media identified as a potential migration pathway. The monitoring network may incorporate several of the piezometers and/or staff gauges installed during assessment of potential migration pathways. Monitoring wells shall be constructed and installed pursuant to IEPA guidance and specifications.

The analytical parameters list shall be based on the data collected during the Source Characterization and review of background information including data presented in the SAP. The selection of parameters or classes of parameters (e.g., volatile organics, metals, etc.) shall be based upon their source characterization and their persistence and mobility within potential pathways of migration. Samples shall be collected, handled, and analyzed in accordance with the protocols and procedures described in the RI/FS Work Plan.

Task 3 - Site Investigation Analysis

Information obtained during the course of the RI shall be evaluated in Task 3 and shall be presented in the RI report. The Site Investigation Analysis shall include the items below:

- a. A quality assurance and data sufficiency evaluation shall be performed. The purpose of this subtask shall be to evaluate and determine if the data quality (e.g. QA/QC procedures have been followed) and quantity are adequate to support the BRAP and the FS and/or DS.

The QA/QC and data quality evaluation shall be presented to IEPA as a part of the RI report. The QA/QC evaluation shall determine if the data met the requirements of the QAPP. The QA/QC evaluation shall be performed in accordance with current state and federal guidance. After the data validation step is completed, the data quality review shall evaluate and determine if the remaining data meets the objectives of the RI.

- b. An analysis and summary of all Site Investigations and their results shall be prepared in the Site Investigation analysis. The results and data from these investigations shall be organized and presented logically so that the relationship between Site Investigations for each medium are apparent. Site Investigation data shall be analyzed to develop a summary of the type and extent of Hazardous Substances at the Site.
- c. The BRAP shall be prepared by the State, it's contractor, or the Defendants if authorized to evaluate the actual or potential threat to public health, welfare, or the environment presented by the No-Action Alternative. Actual or potential risks associated with Hazardous Substances at or attributable to the Site shall be quantified whenever possible. A general outline of work for the BRAP is as follows:
 - 1. Select target Hazardous Substances for evaluation based on their degree of contribution to the risks associated with the Site.
 - 2. Conduct exposure assessments that include the identification of acute and chronic hazards of concern and the population(s) at risk.
 - 3. Evaluate existing toxicity information and assess the potential for acute and chronic effects of the Hazardous Substances at or attributable to the Site, as well as specific effects such as carcinogenicity, reproductive

dysfunction, teratogenicity, neurotoxicity and other metabolic alterations; plus the impact, if any, on aquatic and terrestrial wildlife posed by Hazardous Substances at or attributable to the Site.

4. Assess impact by identifying acceptable exposure guidelines or standards and comparing estimated doses with these guidelines or standards. For target Hazardous Substances at the Site that are designated as carcinogens by USEPA, related guidance shall be utilized to estimate the increase in cancer risks.
5. Sources and magnitude of uncertainties generated in the risk assessment process may be identified as recommended by USEPA guidance. This activity shall evaluate the impact on the analysis of uncertainties propagated through the BRAP and the FS and/or DS.

The BRAP shall be performed in accordance with the procedures described in USEPA's risk assessment guidance; particularly "Risk Assessment Guidance for Superfund: Volume I: Human Health Evaluation Manual" and "Risk Assessment Guidance for Superfund: Volume II: Environmental Evaluation Manual".

Task 4 - Laboratory & Bench Scale (Treatability) Studies

If necessary, laboratory and/or bench-scale studies shall be used to determine the applicability of remedial technologies to conditions and problems at the Site and areas impacted by the Site. The analysis of technologies shall be based on a literature review, vendor contracts and past experience to determine the testing requirements. This task shall not be initiated until sufficient evidence of Hazardous Substances exists to warrant a screening of alternatives for remediation purposes. Laboratory and bench-scale studies shall be conducted for processes that may be applicable as remediation technologies.

If necessary, a testing plan shall be developed identifying the type(s) and goal(s) of the study (ies), the level of effort needed, and data management and interpretation guidelines for submission to IEPA and USEPA for review and IEPA approval.

Upon completion of the testing, the results shall be evaluated to assess the technologies with respect to the specific questions related to the Site as identified in the testing plan.

If laboratory testing and bench-scale testing are required, a report summarizing the testing program and its results, both positive and negative shall be prepared. This report shall be inserted into the RI Report after review and approval by the State Project Manager.

Task 5 - Community Relations

The Defendants shall participate in the development of the Community Relations Plan under the guidance of and at the direction of IEPA. The Defendants shall cooperate with the IEPA in implementing the Community Relations Program, as outlined in the Interim Consent Order.

Task 6 - Project Management/Reports

Responsibilities of the Defendants' Project Managers throughout the RI/FS and/or RI/DS include:

- Working with IEPA in consultation with the AGO to plan the scoping and scheduling for the RI/FS and/or RI/DS.
- Conducting the actual RI/FS and/or RI/DS work.
- Maintaining the timely completion of scheduled activities.
- Keeping IEPA, USEPA, and AGO informed of project schedules.
- Maintaining project quality control and quality assurance.
- Monitoring contractors and subcontractors.
- Preparing monthly progress reports of technical status.
- Ensuring that the work outlined within this task is carried out per federal and state requirements.

Reports for the RI can be classified as follows:

a. Progress Reporting Requirements

Monthly progress reports shall be prepared by the Defendants to describe the technical progress of the project. These reports shall discuss the following items:

1. Identification of activities at the Site
2. Status of work at the Site
3. Schedule status
4. Difficulties encountered during the reporting period

5. Actions being taken to rectify problems
6. Activities planned for the next month
7. Changes in personnel

The monthly progress report shall list target and actual completion dates for each element of activity, including project completion, and shall provide an explanation of any deviation from the milestones in the RI/FS Work Plan.

b. Technical Memoranda

The results of specific RI activities, as outlined in the approved RI/FS Work Plan, shall be submitted in draft form to the State and USEPA throughout the RI process. Responses to the State's comments concerning memorandum issues shall be addressed by the Defendant's Project Managers to the State Project Manager with copies sent to USEPA and AGO Project Managers. The specific technical memoranda and their associated schedules for submittal shall be identified in the RI/FS Work Plan (Task 0).

c. Remedial Investigation (RI) Report

A preliminary RI Report shall be prepared. The preliminary RI Report shall characterize the Site and summarize the data collected and the conclusions drawn from the investigative Tasks 1 through 3. The RI Report shall be submitted in preliminary form to IEPA, USEPA, and AGO for review and comment. Following receipt of comments from the State (sent by IEPA), a final RI Report shall be prepared and submitted. The RI Report shall not be considered final until a letter of approval is issued by the State Project Manager.

III. FEASIBILITY STUDY (FS)

OBJECTIVES

The purpose of the FS is to develop and evaluate remedial action alternatives based on the results of the RI and BRAP that shall mitigate impacts, if any, to human health and the environment resulting from exposure to Hazardous Substances at or attributable to the Site. The Defendants and their consultants shall furnish the necessary personnel, materials, and services to prepare the FS except as otherwise specified. The FS shall conform to Section 121 of SARA, the NCP as amended, the RI/FS (October 1988) guidance as amended, and all relevant state and federal policies.

SCOPE

The FS consists of the following three Tasks:

Task 7 - Remedial Alternatives Screening.

Task 8 - Remedial Alternatives Evaluation.

Task 9 - Feasibility Study Report.

A Work Plan that includes a detailed technical approach and schedules for the FS shall be submitted for approval.

Task 7 - Remedial Alternatives Screening

This task constitutes the first stage of the FS and is comprised of six interrelated subtasks. The goal is to develop and evaluate remedial alternatives for additional screening and review. The Baseline Risk Assessment (BRA) results shall be considered throughout the evaluation process.

Subtask 7.1 - Preliminary Remedial Technologies

A master list of potentially feasible technologies shall be developed that includes remedial technologies for areas both on Site and impacted by the Site. The master list shall be screened according to conditions at the Site and areas impacted by the Site, waste characteristics, and technical requirements, in order to eliminate or modify those technologies that may prove extremely difficult to implement, require unreasonable time periods, or rely on insufficiently developed technologies. The results of this task shall be summarized in a Technical Memorandum that shall be submitted to IEPA, USEPA, and AGO.

Subtask 7.2 - Development of Alternatives

a. Developing Remedial Response Objectives

Objectives specific to the Site shall be developed based on public health and environmental concerns as identified in the BRA results for the Site, the description of the Site conditions, information gathered during the RI, Section 300.430 of the NCP, USEPA's interim guidance and the requirements of any other applicable USEPA, federal, IEPA or state standards, guidance and advisories. Based on the conditions at the Site, the Defendants shall develop and present for IEPA acceptance the cleanup objectives. These cleanup

objectives shall at a minimum satisfy the requirements of the NCP, and may exceed those standards based on IEPA requirements.

b. Assembling Alternatives for Remedial Action

A comprehensive approach specific to the Site shall be developed for a Remedial Action by assembling combinations of identified technologies that may include the following:

1. Treatment alternatives for source control that reduce the need for long term management (including monitoring).
2. Several alternatives that involve containment of waste with a range of treatment options protective of human health and the environment primarily, but not limited to preventing exposure to, or reducing the mobility of, the waste.

The comprehensive approach will consider overall compatibility with any Presumptive Remedy identified for the Site.

For groundwater response actions, a limited number of remedial alternatives shall be developed within a performance range defined in terms of a remediation level. The targeted remediation level for carcinogens is the target risk range of 10^{-4} to 10^{-6} for reasonable maximum exposure and may include different rates of restoration. If feasible, one alternative that would restore groundwater quality to a 10^{-6} risk for maximum lifetime risk level within five years shall be configured. The targeted remediation level for non-carcinogens will be determined by the health advisory process described in Title 35, Part 620, Subpart F of the Illinois Administrative Code.

The remedial action alternatives developed for the Site may involve source control and groundwater response actions. In these instances, the two elements may be formulated together so that the comprehensive remedial action is effective and the elements complimentary. Because each element has different requirements, each shall be detailed separately in the development and the analyses of alternatives. In addition, these elements as developed in the FS must be complementary to any PR developed in a Design Study (DS).

Subtask 7.3 - Initial Screening of Alternatives

a. Initial Screening Considerations

The alternatives developed under Subtask 7.2.b shall be subjected to an initial screening to narrow the list of potential remedial actions for detailed analyses; the rational for eliminating alternatives shall be included.

Initial screening considerations include:

1. Effectiveness - degree to which the alternative protects human health and the environment; attains state and federal applicable or relevant and appropriate requirements (ARARs) or other applicable criteria, advisories, or guidance; significantly and permanently (as defined in CERCLA/SARA) reduces toxicity, mobility or volume of hazardous constituents and are technically reliable and effective in other respects. Reliability considerations include the potential for failure and the need to replace the remedy.
2. Implementability - degree to which the alternative is technically feasible and employs available technologies; the technical and institutional ability to monitor, maintain and replace the technology over time, and the administrative feasibility of implementing the alternative.
3. Cost - evaluation of construction and long-term costs to operate and maintain the alternative based on conceptual costing information. At this stage of the FS, cost shall be used as a factor when comparing alternatives that provide similar results, but not when comparing treatment and non-treatment alternatives. However, cost shall be a factor in the final remedial selection process.

b. Intent of Alternatives Screening

The initial screening of alternatives incorporating treatment shall be conducted with the intent of preserving the most promising alternatives as determined by their likely effectiveness and implementability. The screening shall result in a range of alternatives remaining for future analyses as described in Subtask 7.2.b above.

Innovative alternative technologies shall be carried through the screening if there is a reasonable belief they offer either the potential for better treatment,

performance or implementability; fewer or less adverse impacts than other available approaches; or lower costs for similar performance than the demonstrated technologies.

The containment and No Action Alternatives shall be carried through the screening process to the detailed analyses.

Subtask 7.4 - Remedial Alternatives Array Document

A detailed description of alternatives (including the extent of remediation, containment levels to be addressed, and method of treatment) shall be prepared. This document shall also include a brief history of the Site, areas impacted by the Site, a characterization of the Site and areas impacted by the Site that indicates the potential Hazardous Substances of concern, migration pathways, receptors and other pertinent information. The Alternatives Array Document shall include a proposed list of Applicable or Relevant and Appropriate Requirements (ARARs) as identified by the Defendants. A copy of this Alternatives Array Document shall be submitted to the State and USEPA along with a request for a notification of standards. This document shall be due thirty (30) days after submittal of the draft final RI Report. The Alternatives Array Document shall include the alternatives specified in Subtasks 7.1, 7.2, and 7.3 above.

Subtask 7.5 - Community Relations Program

A program for community relations support shall be developed by the State with consultation and input from the Defendants. The program shall be consistent with the Community Relations Plan developed under Task 5 and with the conditions set forth in the Interim Consent Order.

Subtask 7.6 - Data Requirements

Data requirements specific to the relevant and applicable technologies as presented in the Alternatives Array Document shall be identified. These requirements shall focus on providing the State with the data needed to determine the preferred alternatives.

Task 8 - Remedial Alternatives Evaluation

Subtask 8.1 - Detailed Analyses of Alternatives

a. Evaluation of Alternatives

The action-specific IEPA and federal ARARs and other published criteria, advisories and RI/FS guidance (October 1988) to be used in the analyses and selection of a remedy shall be identified and described. Alternatives shall be analyzed in sufficient detail that remedies can be selected from a set of defined and discrete hazardous waste management approaches.

The information needed to compile and evaluate each alternative shall be developed. The alternatives shall be evaluated for the "nine criteria", which include:

1. Overall Protection of Human Health and Environment.
2. Compliance with Applicable or Relevant and Appropriate Requirements (ARARs).
3. Long-term Effectiveness and Permanence.
4. Reduction of Toxicity, Mobility, and Volume through Treatment.
5. Short Term Effectiveness.
6. Implementability.
7. Cost.
8. Support Agency acceptance. *
9. Community Acceptance. *

* Evaluation of these criteria will be made by the Agencies following receipt of public comment on the draft Final FS.

b. Comparison of Alternatives

Under this subtask, the alternatives shall be compared using the full array of evaluation factors appropriate for the Site and areas impacted by the Site. Component measures of effectiveness shall include the degree to which the alternative is protective of human health and the environment. Where ARAR health-based standards are established, they shall be used to establish the minimum level of protection at the Site and areas impacted by the Site. Where such levels do not exist, risk assessments shall be used to establish appropriate levels for the Site and areas impacted by the Site. The reliability of the

remedy, including the potential need for the cost of replacement, shall be used as another important element in measuring effectiveness.

Measures specific to the Site may also include other health risks borne by the affected population, population sensitivities and impact on environmental receptors. If a groundwater response is appropriate for the Site, the potential for the spread of any Hazardous Substance plumes and the technical limits of aquifer restoration shall be used as measures of effectiveness. Another important measure of effectiveness is the degree to which the mobility, toxicity or volume of the Hazardous Substance is reduced.

Component measures of implementability that shall be considered include the technical feasibility of the alternative, the administrative feasibility of implementing the alternative and the availability of any needed equipment, specialists or capacity outside of the Site. Specific measures for groundwater remedial actions shall include the feasibility of providing an alternate water supply to meet current groundwater needs, the potential need for use of groundwater as a future resource in the study area and the effectiveness and reliability of institutional controls.

Subtask 8.2 - Preferred Remedy

The evaluation of alternatives to select the appropriate remedy shall be in accordance with the NCP. A draft of the selected alternative shall be prepared and submitted by the Defendants for Agency review, comment, and approval upon incorporation of the Agency's comments. The draft selected alternative shall represent the best balance across all evaluation criteria as determined by IEPA in consultation with USEPA and AGO. The draft selected alternative may be rejected by the Agencies in which case the selected alternative will be prepared by IEPA in consultation with the USEPA and AGO.

Task 9 - Final FS Report

The FS Report shall be prepared in draft and submitted to IEPA, USEPA, and AGO for review and comment. Upon incorporation of the Agencies' comments, a final FS Report shall be prepared and submitted. The FS Report shall not be considered final until a letter of approval is issued by the State Project Manager. Deliverables and technical memoranda submitted previously shall be summarized and referenced in order to limit the size of the report. The report shall completely document the FS and the process by which the recommended remedial alternative was selected.

IV. DESIGN STUDY (DS)

During or upon completion of the RI, the Defendants may propose to conduct a DS in place of an FS to identify and conceptually design a Presumptive Remedy, or Presumptive Remedies, for the Site, or areas of the Site. The areas may include the Primary Zinc Slag Pile, Lithopone Ridges, Vanadium Pentoxide Catalyst Disposal Area, Phosphogypsum Stack and other units identified by the Defendants and accepted by the Agency.

OBJECTIVES

The purpose of the DS is to confirm the feasibility and support the conceptual design of a Presumptive Remedy based on the results of the RI and BRA that shall mitigate, at least in part, impacts, if any, to human health and the environment resulting from exposure to Hazardous Substances at or attributable to the Site, or a portion of the Site, and shall be consistent with, and complementary, to overall closure of the Site. The Presumptive Remedy(s) evaluated in the DS should be a preferred technology based on the previous performance of the remedy at similar sites. The Defendants and their consultants shall furnish the necessary personnel, materials, and services to conduct the DS except as otherwise specified. The DS shall conform to applicable requirements of Section 121 of SARA, the NCP as amended, the RI/FS (October 1988) guidance as amended, Superfund Remedial Design and Remedial Action Guidance (OSWER Directive 9355.0-4A, June 1986) as amended, and all relevant state and federal policies.

SCOPE

The DS consists of the following four Tasks:

- Task 10. - Scoping of Performance Requirements
- Task 11. - Design Sampling and Preliminary Design
- Task 12. - Scoping Document for Presumptive Remedy(s)
- Task 13. - Final Design for Presumptive Remedy(s)

A Work Plan that includes a detailed technical approach and schedules for the DS shall be submitted for approval.

Task 10. - Scoping of Performance Requirements

The goal is to define performance requirements for a Presumptive Remedy, or Remedy(s), sufficient to meet the requirements developed in the Baseline Risk Assessment and ARARs applicable to the Site, or areas of the Site addressed through a Presumptive Remedy.

Subtask 10.1 - Develop Remedial Response Objectives for the Presumptive Remedy

Objectives specific to the Site, or a portion of the Site, subject to the Presumptive Remedy shall be developed based on public health and environmental concerns as identified in the BRAP for the Site, the description of the Site conditions, information gathered during the RI, applicable parts of Section 300.430 of the NCP, USEPA's interim guidance and the requirements of any other applicable USEPA, federal, IEPA or state standards, guidance and advisories. Based on the conditions at the Site, the Defendants shall develop and present for Agency approval the cleanup objectives relevant to an evaluation of the Presumptive Remedy.

Subtask 10.2 - Select Potentially Effective Presumptive Remedy(s)

Potentially feasible technologies shall be selected based on the performance of those technologies at similar sites. The technologies shall be selected according to conditions at the Site and areas impacted by the Site, waste characteristics, and technical requirements. The objective shall be to select a developed and proven technology, or a set of complementary technologies, previously shown to have been effective, implementable, and cost-effective in mitigating Hazardous Substances at other sites with similar characteristics.

Based on the results of the RI and the BRA, the Presumptive Remedy(s) shall be evaluated, at a minimum, for the following performance characteristics:

Presumptive Remedy(s) for source control shall reduce the need for long-term management (including monitoring), and/or provide containment of waste with a range of treatment options protective of human health and the environment primarily, but not limited to preventing exposure to, or reducing the mobility of, the waste.

For groundwater response actions, the Presumptive Remedy(s) shall provide, or contribute to, mitigation within a performance range defined in terms of a remediation level. The targeted remediation level for carcinogens is the target risk range of 10^{-4} to 10^{-6} for reasonable maximum exposure and may include different rates of restoration. The targeted remediation level for non-carcinogens will be determined by the health advisory process described in Title 35, Part 620, Subpart F of the Illinois Administrative Code. If the Presumptive Remedy(s) are intended to perform in conjunction with other Presumptive Remedy(s) and/or response actions selected in a FS, the conceptual performance relationships between the Presumptive Remedy(s) and other response actions shall be identified.

The Presumptive Remedies developed for the Site may involve both source control and groundwater response actions. In these instances, the two elements may be formulated together so that the comprehensive remedial action is effective and the elements complementary. Because each element has different requirements, each shall be detailed separately in identifying Presumptive Remedy performance requirements. In addition, these elements as developed in the DS must be complementary to any developed in the FS.

Results and findings of Subtasks 10.1 through 10.2 shall be submitted to IEPA in a Draft Identification of Conceptual Presumptive Remedy(s) (ICPR) Document. IEPA shall review the draft ICPR Document, and respond in writing with IEPA concurrence and/or comments regarding the proposed performance requirements and conceptual Presumptive Remedy(s).

Subtask 10.3 - Community Relations Program

A program for community relations support shall be developed by the State with consultation and input from the Defendants. The program shall be consistent with the Community Relations Plan developed under Task 5 and with the conditions set forth in the Interim Consent Order.

Task 11 - Design Sampling and Preliminary Design

Upon receipt of IEPA concurrence with the ICPR, the Defendants shall prepare and submit a Design Sampling and Testing Plan to develop a preliminary design for the conceptual Presumptive Remedy(s). The Design Sampling and Testing Plan may include matrix sampling and analysis, geotechnical testing, bench-scale studies, aquifer testing, pilot testing, construction materials identification and testing, or other investigations for the purpose of developing a detailed, preliminary design for the Presumptive Remedy(s). As Design Sampling and Testing Plans may be proposed to occur coincidental to Remedial Investigation activity, these Design Sampling and Testing Plans will be designed to complement and possibly supplement the Remedial Investigation. To the extent possible, redundancy in the RI and any Design Study field activity will be avoided. The Defendants shall present the Design Sampling and Testing Plan for IEPA acceptance. Upon receipt of IEPA approval of the Design Sampling and Testing Plan, the Defendants shall implement the plan. Results of the Design Sampling and Testing Plan program will be reported in a separate Technical Memorandum to be supplied with, or prior to, the Draft Scoping Document for Presumptive Remedy(s).

Task 12 - Scoping Document for Presumptive Remedy(s)

The Defendants shall prepare a Draft Scoping Document for Presumptive Remedy(s). The Draft Scoping Document(s) will address each Presumptive Remedial Action to be taken to comply with the Interim Consent Order. The Draft Scoping Document(s) for Presumptive Remedy(s) shall include a map of the facility identifying each unit which will be the subject of a Presumptive Remedial Action, a narrative description of each Presumptive Remedial Action, conceptual drawings (both in plan and section where appropriate) for each Presumptive Remedial Action, the appropriate ARARs for each Presumptive Remedial Action, and a unified schedule of remaining investigative activities, design, procurement and a conceptual construction schedule for the proposed Presumptive Remedial Action(s) to be taken to comply with the Interim Consent Order. The Draft Scoping Document for Presumptive Remedy(s) shall reference all pertinent Technical Memoranda prepared during RI or DS activities.

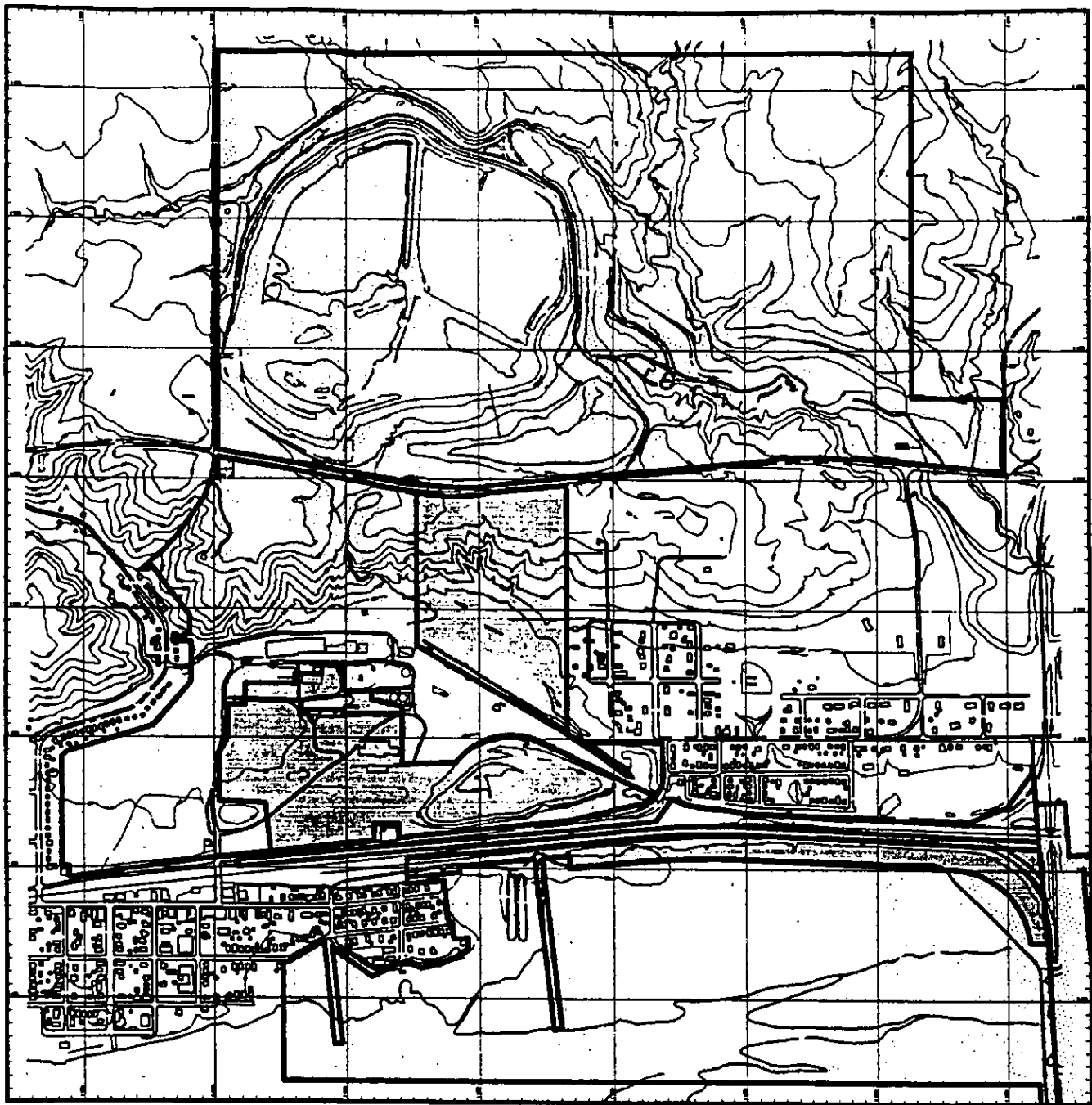
The Scoping Document for Presumptive Remedy(s) shall be evaluated consistent with the applicable requirements of the NCP.

In cases where a Presumptive Remedy may not meet all of the applicable evaluation criteria, the Presumptive Remedy may still be considered acceptable if implementation in conjunction with other response actions planned for the Site will result in a combined action that satisfactorily meets all the criteria.

The Defendants shall submit the Draft Scoping Document for Presumptive Remedy(s) to IEPA for review and comment. Upon incorporation of IEPA's comments, a Draft Final Scoping Document for Presumptive Remedy(s) shall be prepared and submitted. The Draft Final Scoping Document for Presumptive Remedy(s) shall not be considered final until execution of a ROD by Agencies. Deliverables and technical memoranda submitted previously shall be summarized and referenced in order to limit the size of the report. The report shall completely document the DS and the process by which the recommended Presumptive Remedy was selected.



Task 13 - Final Design for Presumptive Remedy(s)

Upon approval of any Presumptive Remedy(s) in any Final Scoping Document(s) for Presumptive Remedy(s), and incorporation into an approved ROD(s), Defendants shall complete a final design of the selected Presumptive Remedy(s) if the Presumptive Remedy(s) are consistent with and complementary to all selected remedy(s) from the FS.



Note: Mobil owns an additional strip of land from the SE corner of this map down to the Illinois River

LEGEND

-  MOBIL MINING AND MINERALS CO. PROPERTY
-  HORSEHEAD INDUSTRIES, INC. PROPERTY

NOTE:
LOCATIONS OF PROPERTY BOUNDARIES SHOWN ON THIS
DRAWING ARE APPROXIMATE, AND BASED ON INFORMATION
THAT WAS OBTAINED, AND MODIFIED, FROM DRAWINGS
PREPARED BY OTHERS.



SCALE: 1" = 1200'

THE DEPUE SITE - PRP GROUP

ATTACHMENT 3

SITE PLAN

PREPARED: B. JINKINS

DRAWN: L. NIST

CHECKED: C. OURAL

REVISED:

DATE: 4/18/95

**TERRA
ENVIRONMENTAL
SERVICES, INC.**

SURVEY PREPARED BY:

SURDEX

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